

SCHEDULE 2.1- SERVICES DESCRIPTION

The scope of the Services to be provided by the Supplier are described in more detail in Attachment 2.1 (*Services Description*) of the Order Form.

SCHEDULE 2.2 - PERFORMANCE LEVELS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Available has the meaning given in Paragraph Schedule 11 of Part II of Annex 1;

End User means any person authorised by the Buyer to use the IT Environment and/or the Services including a Customer;

Dashboard means the provision of a live dashboard allowing the Buyer to access performance and incident management information in real time;

Help Desk means the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;

Non-Available means in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;

Performance Monitoring Report has the meaning given in Paragraph 1.1.1 of Part B;

Performance Review Meeting means the regular meetings between the Supplier and the Buyer to manage and review the Supplier's performance under this Contract, as further described in Paragraph 1.5 of Part B;

Permanent Fix means in relation to a Service Incident, an agreed technical solution, which is not a workaround, which will prevent the event which caused the original incident from re-occurring;

Repeat KPI Failure has the meaning given in Paragraph 3.1 of Part A;

Resolved means in relation to a Service Incident, either a Permanent Fix has been deployed or, if not possible, a workaround is deployed in accordance with the provisions of Schedule 2.2, Part B, Paragraph 5;

Satisfaction Survey has the meaning given in Paragraph 6.1 of Part II of Annex 1;

Service Availability has the meaning given in Paragraph 2 of Part II of Annex 1;

Service Desk means the overarching Service Incident management service provided by or on behalf of the Buyer (including by a Buyer nominated Relevant Third Party Supplier) across the End to End Service;

Service Downtime means any period of time during which any of the Services are not Available; and

System Response Time has the meaning given in Paragraph 3.1 of Part II of Annex 1.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.1 Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Buyer a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “**Repeat KPI Failure**”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Service Points
Target Performance Level: 99%	0
Minor KPI Failure: 98.0% - 98.9%	1

Service Availability Severity Levels		Service Points
Serious KPI Failure:	97.0% - 97.9%	2
Severe KPI Failure:	96.0% - 96.9%	3
KPI Service Threshold:	below 96%	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

4 PERMITTED MAINTENANCE

The Supplier shall be allowed to book a maximum of one (1) hour per month of Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Buyer.

5 SERVICE CREDITS

- 5.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Buyer shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 The Supplier shall provide:

1.1.1 within ten (10) Working Days of the end of each Service Period a report to the Buyer Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the "**Performance Monitoring Report**") (notwithstanding the information provided as part of the Dashboard below); and

1.1.2 the live performance monitoring information against each KPI and PI for display on the Dashboard, in addition to information provided as part of the Dashboard reporting requirements in Schedule 8.4 (*Reports and Record Provisions*).

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

1.2.1 for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Measurement Periods;

1.2.2 a summary of all Performance Failures that occurred during the Service Period;

1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;

1.2.4 which Performance Failures remain outstanding and progress in resolving them;

1.2.5 for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;

1.2.6 the status of any outstanding Rectification Plan processes, including:

(a) whether or not a Rectification Plan has been agreed; and

(b) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;

1.2.8 the number of Service Points awarded in respect of each KPI Failure;

1.2.9 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

1.2.10 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;

1.2.11 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;

- 1.2.12 the status of any Incident where a root cause analysis is being (or has been) undertaken and action taken or planned to resolve the underlying cause and prevent recurrence;
- 1.2.13 a list of workarounds still in place on the last day of the Service Period and the status of any proposed resolution to remove the workaround;
- 1.2.14 such other details as the Buyer may reasonably require from time to time; and

Information in respect of previous Service Periods

- 1.2.15 a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;
- 1.2.16 the amount of Service Credits that have been incurred by the Supplier over the past six (6) Service Periods;
- 1.2.17 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- 1.2.18 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Buyer and the Supplier for the next Quarter.

Dashboard

- 1.3 The Dashboard shall be presented in the form of an online accessible dashboard in accordance with the Services Description and, as a minimum, shall also contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
 - 1.3.1 financial indicators;
 - 1.3.2 the Target Performance Levels achieved;
 - 1.3.3 behavioural indicators;
 - 1.3.4 performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
 - 1.3.5 performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
 - 1.3.6 Milestone trend chart, showing performance of the overall programme;
 - 1.3.7 sustainability and energy efficiency indicators, for example energy consumption and recycling performance; and
 - 1.3.8 Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Dashboard shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Dashboard. The Performance Review Meetings shall (unless otherwise agreed):
 - 1.5.1 take place within five (5) Working Days of the Performance Monitoring Report being issued by the Supplier;

1.5.2 take place at such location and time (within normal business hours) as the Buyer shall reasonably require (unless otherwise agreed in advance); and

1.5.3 be attended by the Supplier Representative and the Buyer Representative.

1.6 The Buyer shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

1.7 The Supplier shall cooperate with and work with the Service Desk, including making the Dashboard information available to the Service Desk in accordance with the Buyer Requirements.

2 PERFORMANCE RECORDS

2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to the Buyer upon the Buyer's request. The records and documents of the Supplier shall be available for inspection by the Buyer and/or its nominee at any time and the Buyer and/or its nominee may make copies of any such records and documents.

2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Buyer such supporting documentation as the Buyer may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

2.3 The Supplier shall ensure that the Performance Monitoring Report, the Dashboard (as well as historic Performance Monitoring Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Buyer are available to the Buyer on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

The Buyer reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Contract against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

4 CLOCK STOP

4.1 The Supplier's obligation to resolve or respond to an Incident in accordance with KPI's 6a-6d shall be suspended for any period of Clock Stop applied to that specific Incident.

4.2 A Clock Stop can only occur in the following circumstances:

4.2.1 where the Incident is passed to a third party that is not within the control of the Supplier or for which the Supplier has responsibility for;

4.2.2 where the Supplier, acting reasonably has passed control of the Incident to the Buyer or a Relevant Third Party Supplier for resolution; or

4.2.3 by mutual agreement with the Buyer.

5 WORKAROUNDS

5.1 Where a workaround in respect of a Service Incident is identified and the Buyer deems such workaround acceptable and it is deployed:

- 5.1.1 the relevant Service Incident shall be deemed Resolved for the purposes of KPI's 6a-6d;
and
- 5.1.2 that workaround shall be formally recorded in a central database which shall be held and maintained in the Virtual Library.
- 5.2 Notwithstanding the above, all workarounds shall be resolved in accordance with KPI8 (Permanent Fix Availability) and KPI9 (Permanent Fix Deployment). The Buyer shall review and approve the proposed remediation acting reasonably. No remedial work shall be deployed without approval of the Buyer and subject to relevant Testing pursuant to Schedule 6.2 (*Testing Procedures*).
- 5.3 Where a workaround is remediated and the workaround is no longer used, the central workaround database on the Virtual Library shall be updated accordingly.

ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

**PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS
TABLES**

The Key Performance Indicators and Performance Indicators that shall apply to the Operational Services are set out in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form.

PART II: DEFINITIONS

1 AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:

- 1.1.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- 1.1.2 the Supplier System is able to process the Buyer Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- 1.1.3 all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2 SERVICE AVAILABILITY

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

- 2.2.1 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.2 (*Maintenance*) shall be subtracted from the total number of hours in the relevant Service Period; and
- 2.2.2 Service Points shall accrue if:
 - (a) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
 - (b) where maintenance undertaken by the Supplier exceeds the permitted hour(s) in any Service Period;
- 2.2.3 “**Gold and Silver Level Service Availability**” shall be measured as a percentage of the total time in a Service Period, in accordance with the formula set out in KPI1 and KPI2 and detailed in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form; and
- 2.2.4 “**Customer Experience Layer Performance**” means the performance as calculated in accordance with KPI3 (Customer Experience Layer Performance) as detailed in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form.

3 RESPONSE TIMES

- 3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).
- 3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

4 HELP DESK RESPONSE TIMES

- 4.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.
- 4.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Buyer in accordance with the provisions of Part B of this Schedule.

5 FIX TIMES

- 5.1 The “**Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:
 - 5.1.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
 - 5.1.2 the Buyer has been provided with a workaround in relation to the Service Incident deemed acceptable by the Buyer.
- 5.2 Fix Times for Severity 3 Service Incidents and Severity 4 Service Incidents shall be measured in Operational Hours.

Worked example: if the Operational Hours for a fault are 0800-1800, then the clock stops measuring Fix Time at 1800 in the evening and restarts at 0800 the following day.

- 5.3 Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24 x 7.
- 5.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Buyer on Fix Times as part of the Performance Monitoring Report.
- 5.5 For the purposes of this Paragraph 5, the following expressions shall have the meanings set opposite them below:

“Operational Hours”	In relation to any Service, the hours for which that Service is to be operational as set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
“Service Incident”	a reported occurrence of a failure to deliver any part of the Services in accordance with the Buyer Requirements or the Performance Indicators;
“Severity 1 Service Incident” or “P1” (Critical)	a Service Incident which, in the reasonable opinion of the Buyer: <ul style="list-style-type: none"> (a) constitutes a loss or major disruption to one or more business critical Services;

- (b) prevents End Users or Customers from self-serving digitally to interact or do business with the Buyer;
- (c) prevents End Users from working or accessing the Supplier System;
- (d) has a critical impact on the activities of the Buyer;
- (e) causes significant financial loss and/or disruption to the Buyer;
- (f) results in any material loss or corruption of Buyer Data; or
- (g) there is no workaround possible other than manual processes.

Non-exhaustive examples:

- a loss of power to a data centre causing failure of Services;
- a failure of the Services to provide user authentication service;
- an incident which is in line or exceeds the Buyer's Risk Appetite for major or critical impact;
- significant issues affecting Customers' ability to Authenticate and self-serve digitally; or
- loss of ability to update Buyer Data.

**“Severity 2 Service Incident”
or “P2” (Major)**

a Service Incident which, in the reasonable opinion of the Buyer has the potential to:

- (a) Cause partial loss or intermittent disruption to one significant business system/service/process with low volumes; or
- (b) Cause partial loss or intermittent disruption to one significant business system/service/process where Customers and/or Users are affected; or
- (c) Cause partial loss or intermittent disruption to one or more non-critical business system/service/process; or
- (d) have a major (but not critical) adverse impact on the activities of the Buyer and no workaround acceptable to the Buyer is available;
- (e) have a major (but not critical) adverse impact on the activities of the Buyer and no workaround acceptable to the Buyer is available; or
- (f) cause a financial loss and/or disruption to the Buyer which is more than trivial but less severe

than the significant financial loss described in the definition of a Severity 1 Service Failure.

Non-exhaustive examples:

- Where some Customers or End Users experience issues with Authenticating and self-servicing digitally;
- Impact is in line with the Buyer's Risk Appetite for significant impact;
- corruption of organisational database tables; or
- loss of ability to update Buyer Data.

"Severity 3 Service Incident" or "P3" (Normal)

a Service Incident which, in the reasonable opinion of the Buyer has the potential to:

- (a) cause partial loss or intermittent disruption to one or more non-critical business system/service/process which;
 - (i) have a major adverse impact on the activities of the Buyer which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Buyer; or
 - (ii) have a moderate adverse impact on the activities of the Buyer.

Non-exhaustive example:

- does not directly impact Customers, but may impact low numbers of End Users for non-critical activity;
- Impacts in line or exceeds Buyers Risk Appetite for minor impact;
- inability to access data for a class of Customers;

"Severity 4 Service Incident" or "P4" (Low)

a Service Incident which, in the reasonable opinion of the Buyer has the potential to:

- (a) have a minor adverse impact on the provision of the Services to End Users or on third parties including a Relevant Third Party Supplier; or
- (b) cause partial loss or intermittent disruption to a single, non-critical system/service/process that does not impact Customers and/or End Users; or
- (c) a Service Incident comprising a flaw which is cosmetic and, as such, does not undermine the Customer or End User's confidence in the information being displayed.

Non-exhaustive examples:

- spelling error; or
- misalignment of data on screen display;
- impact is in line or exceeds the Buyers Risk Appetite for low impact

6 SATISFACTION SURVEYS

6.1 In order to assess the level of performance of the Supplier, the Buyer may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”). The subject matter of Satisfaction Surveys may include:

6.1.1 the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or

6.1.2 other suggestions for improvements to the Services.

6.2 The Buyer shall reflect in the Performance Monitoring Meeting any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description. The Buyer may also reflect the responses to the Satisfaction Surveys in a performance review pursuant to Clause 15 of the Collaboration Agreement.

7 VIRTUAL LIBRARY COMPLETENESS

The Virtual Library shall be complete where all of the information required under Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form has been uploaded to the Virtual Library in accordance with Paragraph 4 of Schedule 8.4 (*Reports and Records Provisions*).

SCHEDULE 2.3 - STANDARDS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Standards Hub means the Government's open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>; and

Suggested Challenge means a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2 GENERAL

2.1 Throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Buyer's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.

2.2 Where a new or emergent standard is to be developed or introduced by the Buyer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Buyer's receipt, of the Services is explained to the Buyer (in a reasonable timeframe), prior to the implementation of the new or emergent standard. The Supplier shall work with the Buyer, including cooperating with any Relevant Third Party Suppliers and compliance with the obligations set out in the Collaboration Agreement in relation to such new or emergent Standards on identifying the impact of such proposal on:

2.2.1 the Suppliers provision of the Services;

2.2.2 the Buyer's receipt of the Services; and

2.2.3 the Relevant Third Party Suppliers provision of any Related Services.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Buyer and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4 OPEN DATA STANDARDS & STANDARDS HUB

4.1 The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Contract, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

- 4.3 The Supplier shall ensure that all documentation published on behalf of the Buyer pursuant to this Contract is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Buyer otherwise agrees in writing.

5 TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

6 ACCESSIBLE DIGITAL STANDARDS

- 6.1 The Supplier shall comply with (or with equivalents to):

- 6.1.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
- 6.1.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- 7.1.1 ITIL v4;
- 7.1.2 ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- 7.1.3 ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- 7.1.4 ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
- 7.1.5 ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

8 ENVIRONMENTAL REQUIREMENTS

The Supplier shall comply with the environmental requirements set out in Attachment 2.3 (*Environmental Requirements*) of the Order Form.

9 HARDWARE SAFETY STANDARDS

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

- 9.1.1 any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In

considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;

9.1.2 any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;

9.1.3 any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and

9.1.4 any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

10 BUYER POLICIES AND GUIDELINES

The Supplier shall comply with the Buyer's policies and guidelines set out in Table D of Attachment 2.3 of the Order Form.

11 PUBLICLY AVAILABLE STANDARDS AND POLICIES

The Supplier shall as a minimum adhere to the Standards set out in Table E of Attachment 2.3 of the Order Form.

12 BUYER SPECIFIC LEGISLATION

12.1 Without prejudice to the Supplier's obligations under Clause 5.1.3 to deliver the Services in accordance with all applicable Laws the Supplier shall comply with and shall provide the Services in such manner as to enable the Supplier to comply with any Laws specifically relating to the Buyer including but not limited to those listed in Table F of Attachment 2.3 of the Order Form.

12.2 For the avoidance of doubt, the costs for compliance with any Change in Law shall be as stated in accordance with Clause 13.2.

13 AUDITING COMPLIANCE

13.1 In addition to the general obligation to demonstrate compliance under Paragraph 2, the Supplier shall commission an independent annual audit in respect of its compliance with this Schedule, the cost of such audit to be borne by the Supplier.

13.2 Prior to commissioning the audit, the Supplier shall engage with the Buyer to agree the scope of the audit, which must be approved in writing by the Buyer but which shall include as a minimum the requirement to review compliance with the certification as required under this Schedule.

13.3 The Supplier shall ensure the Buyer has unfettered access to the resultant audit reports and the auditor for the purpose of understanding such audit reports.

13.4 If an audit undertaken pursuant to this Schedule identifies that the Supplier has committed a Default, this shall constitute a Notifiable Default.

ANNEX: ENVIRONMENTAL REQUIREMENTS

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

Permitted Item means those items which are permissible under this Contract to the extent set out in Attachment 2.3 (*Environmental Requirements*) of the Order Form (if any);

Prohibited Items means those items which are not permissible under this Contract as set out at Table A of Attachment 2.3 (*Environmental Requirements*) of the Order Form;

Sustainability Reports means written reports to be completed by the Supplier containing the information outlined in Table B of Attachment 2.3 (*Environmental Requirements*) of the Order Form;

Waste Hierarchy means prioritisation of waste management in the following order of preference:

- (a) Prevention – by using less material in design and manufacture. Keeping products for longer;
- (b) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
- (c) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
- (d) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and
- (e) Disposal - Landfill and incineration without energy recovery.

2 ENVIRONMENTAL REQUIREMENTS

2.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to this Contract.

2.2 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.

2.3 In performing its obligations under this Contract the Supplier shall to the reasonable satisfaction of the Buyer:

- 2.3.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Buyer's reasonable questions;
- 2.3.2 prioritise waste management in accordance with the Waste Hierarchy;
- 2.3.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
- 2.3.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
- 2.3.5 inform the Environmental Agency within one (1) Working Day in the event that a permit or exemption to carry or send waste generated under this Contract is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Contract is revoked the Supplier shall cease to carry or send waste or allow waste to be

carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;

2.3.6 minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and

2.3.7 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.

2.4 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.

2.5 The Supplier shall not provide to the Buyer Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.

2.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:

2.6.1 it is a Permitted Item; or

2.6.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.

2.7 The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Contract and provide the Sustainability Report to the Buyer on the date and frequency outlined in Table C of this Annex.

2.8 The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two (2) per Contract Year.

TABLE A – Prohibited Items

See Attachment 2.3 of the Order Form

TABLE B – Sustainability Reports

See Attachment 2.3 of the Order Form

TABLE C – NOT USED

TABLE D – Buyer’s Policies and Guidelines

See Attachment 2.3 of the Order Form

TABLE E – Publicly Available Standards and Policies

See Attachment 2.3 of the Order Form

TABLE F – Buyer Specific Legislation

See Attachment 2.3 of the Order Form

SCHEDULE 2.4 - SECURITY MANAGEMENT

PART A - SECURITY ASSURANCE

1 DEFINITIONS;

1.1 In this Schedule:

Anti-Malicious Solution means a solution that scans for, prevents the introduction of, identifies and contains the spread impact of possible Malicious Software in the IT Environment;

Breach of Security means an event that results, or could result, in:

- (a) any unauthorised access to or use of the Buyer Data, the Services and/or the Information Management System; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Buyer Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract;

Bulk Customer Data means a data set relating to Customers that contains at least one thousand (1,000) Customer records and that allows individuals to be directly identified;

Central Security Monitoring Service means the overarching monitoring and incident response service provided on behalf of the Buyer by a nominated a Relevant Third Party Supplier across the Information Management System;

Certification Requirements means the information security requirements set out in Paragraph 8;

CHECK Service Provider means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by Paragraph 9.1;

Core Information Management System means those information assets, IT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Buyer Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources) which the Buyer has determined in accordance with Paragraph 4.2 shall be subject to the provisions of this Schedule;

CREST Service Provider means a company with a SOC Accreditation from CREST International;

Cyber Essentials means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;

Cyber Essentials Plus means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;

Cyber Essentials Scheme means the Cyber Essentials scheme operated by the National Cyber Security Centre;

Enhanced Privileges means greater access rights to the Information Management System for administration purposes which provides individuals, such as system and database administrators, with the ability to make changes to the Information Management System, which Supplier Personnel without such privileges are prohibited from;

Information Management System means the Core Information Management System and the Wider Information Management System;

Information Security Approval Statement means a notice issued by the Buyer which sets out the information risks which the Supplier has identified as being associated with using the Core Information Management System and confirms that:

- (a) the Buyer is satisfied that all relevant risks have been identified, adequately and appropriately addressed by the Supplier;
- (b) the Buyer has accepted any residual risks; and
- (c) the Supplier may use the Core Information Management System to Process Buyer Data.

Information Security Assurance Assessment means the set of policies, standards, guidelines, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 6 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;

Integration Platform means the integration platform sitting at the centre of the architecture, providing a bridge between all platforms and providing foundation connectivity, routing and security capabilities, provided by or on behalf of the Buyer by a Relevant Third Party Supplier;

IT Health Check has the meaning given in Paragraph 9.1;

Personal Data Processing Statement means a document setting out:

- (a) the types of Personal Data which the Supplier and/or its Sub-contractors Processes or will Process under this Contract;
- (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Contract;
- (c) the nature and purpose of such Processing;
- (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Contract; and
- (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Contract against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;

Process means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Red Team, Purple Team Testing means cyber security testing strategies, including penetration testing, as recognised within the cyber security industry as Good Industry Practice;

Required Changes Register mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Core Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 7.2 together with the date by which such change shall be implemented and the date on which such change was implemented;

Risk Register is the risk register within the Information Security Assurance Assessment which is to be prepared and submitted to the Buyer for approval in accordance with Paragraph 6;

Security Incident Management Process means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal

operations as quickly as possible, minimising any adverse impact on the Buyer Data, the Buyer, the Relevant Third Party Suppliers, the Services and/or users of the Services and which shall be prepared by the Supplier as part of the Security Management Plan.

Security Management Plan means the document prepared by the Supplier using the template in Annex 3, comprising:

- (a) the Information Security Assurance Assessment;
- (b) the Personal Data Processing Statement;
- (c) the Required Changes Register; and
- (d) the Security Incident Management Process;

Security Test has the meaning given in Paragraph 9.1;

Special Category Personal Data means the categories of Personal Data set out in article 9(1) of the UK GDPR;

Vulnerability Correction Plan has the meaning given in Paragraph 9.4.1; and

Wider Information Management System means those information assets, IT systems and/or Sites which will be used by the Supplier, the Relevant Third Party Supplier or their respective Sub-contractors to Process Buyer Data as part of the end to end solution which have not been determined by the Buyer to form part of the Core Information Management System, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources).

2 INTRODUCTION

2.1 This Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Buyer Data and the Information Management System;
- 2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Buyer Data;
- 2.1.3 The security requirements in Annex 1, with which the Supplier must comply;
- 2.1.4 the Security Tests which the Supplier shall conduct on the Core Information Management System during the Term;
- 2.1.5 the Supplier's obligations to:
 - (a) return or destroy Buyer Data on the expiry or earlier termination of this Contract; and
 - (b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and
 - (c) report Breaches of Security to the Buyer.

2.2 Where there is a reference to the Buyer's rights or responsibilities in this Schedule, such rights or responsibilities may be exercised by the Buyer or, if so directed by the Buyer from time to time, by a Relevant Third Party Supplier who is delivering the Central Security Monitoring Service on behalf of the Buyer.

3 PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the confidentiality, integrity and availability of the Buyer Data and, consequently on the security of:
- 3.1.1 the Sites;
 - 3.1.2 the IT Environment;
 - 3.1.3 the Supplier Personnel;
 - 3.1.4 the Information Management System; and
 - 3.1.5 the Services.
- 3.2 Notwithstanding the involvement of the Buyer in assessing the arrangements which the Supplier implements to ensure the security of the Buyer Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
- 3.2.1 the security, confidentiality, integrity and availability of the Buyer Data whilst that Buyer Data is under the control of the Supplier or any of its Sub-contractors; and
 - 3.2.2 the security of the Core Information Management System.
- 3.3 The Supplier shall:
- 3.3.1 comply with the security requirements in Annex 1; and
 - 3.3.2 ensure that each Sub-contractor that Processes Buyer Data complies with the Sub-contractor Security Requirements.
- 3.4 The Supplier shall ensure its leadership's commitment to and support of cyber security, information security and risk management to protect the Buyer against data exposure. It shall appoint individuals at the relevant level with the relevant skill and experience to discharge their duties under this Agreement, such roles and individuals to be designated as Key Personnel in Schedule 9.2 (*Key Personnel*) as appropriate.
- 3.5 The Supplier shall provide the Buyer with access to Supplier Personnel responsible for security and information assurance to facilitate the Buyer's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4 INFORMATION MANAGEMENT SYSTEM

- 4.1 The Information Management System comprises the Core Information Management System and the Wider Information Management System.
- 4.2 The Buyer shall be responsible for determining the boundary between the Core Information Management System and the Wider Information Management System. In order to enable the Buyer to make such determination, the Supplier shall provide the Buyer with such documentation and information that the Buyer may reasonably require regarding any information assets, IT systems and/or Sites which will be used by the Supplier or any Sub-contractor to Process Buyer Data together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources). The Buyer shall notify the Supplier, as soon as reasonably practical following the receipt of such documentation and information, of its decision regarding the component parts of the Core Information Management System and its boundary with the Wider Information Management System (noting that, except where explicitly agreed with the Buyer, the Core Information Management System shall only interact with the Wider Information Management System via the Integration Platform). The Supplier shall reproduce the Buyer's decision as a diagram

documenting the Core Information Management System, the Wider Information Management system and the boundary between the two. This diagram shall form part of the Security Management Plan.

- 4.3 Any proposed change to the component parts of the Core Information Management System or the boundary between the Core Information Management System and the Wider Information Management System shall be notified and processed in accordance with the Change Control Procedure.

5 CENTRAL SECURITY MONITORING SERVICE

- 5.1 Notwithstanding the obligations on the Supplier in respect of the Core Information Management System, the Supplier shall also cooperate, collaborate and engage as necessary with the Central Security Monitoring Service and the Relevant Third Party Suppliers in respect of the Central Security Monitoring Service and to fulfil all roles and responsibilities as defined by the Central Security Monitoring Service to ensure a clear approach to the detection and response to any cyber security incidents.

- 5.2 In its engagement with and obligations in respect the Central Security Monitoring Service the Supplier shall comply with the requirements set out in the Buyer Requirements, including as a minimum:

5.2.1 comply with the NIST Cyber Security Framework (Level 4) as amended from time to time;

5.2.2 providing the Buyer and the Central Security Monitoring Service with:

(a) the inventory of physical and virtual devices; and

(b) the inventory of software platforms, applications and external services,

used to provide the Core Information Management System;

5.2.3 monitoring of all devices and, where relevant, external service providers, within the scope of the Core Information Management System (including those used by Sub-contractors) by and/or in accordance with the instructions of the Central Security Monitoring Service;

5.2.4 immediately communicate any suspected or actual Breach of Security to the Central Security Monitoring Service and the Buyer and continue to keep all parties informed throughout any incident response and recovery activities;

5.2.5 providing log, event and other incident/vulnerability data to the Central Security Monitoring Service in accordance with its requirements, the scope of such requirements to be reviewed by the Buyer;

5.2.6 assisting the Central Security Monitoring Service to establish and manage a baseline of network operations and expected data flows for Users and systems, with monthly reporting if requested;

5.2.7 implementing appropriate countermeasures based on threat intelligence disseminated by the Central Security Monitoring Service; and

5.2.8 participating in testing of response and recovery plans coordinated by the Central Security Monitoring Service, in respect of attacks spanning the Wider Information Management System.

6 INFORMATION SECURITY APPROVAL STATEMENT

- 6.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Services Commencement Date.

- 6.2 The Supplier may not use the Information Management System to Process Buyer Data unless and until:
- 6.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 9.1; and
 - 6.2.2 the Buyer has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 6.
- 6.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Buyer Data and the Information Management System.
- 6.4 The Supplier shall prepare and submit to the Buyer within twenty (20) Working Days of the date of this Contract, the Security Management Plan, which comprises:
- 6.4.1 an Information Security Assurance Assessment;
 - 6.4.2 the Required Changes Register;
 - 6.4.3 the Personal Data Processing Statement;
 - 6.4.4 the diagram documenting the Core Information Management System, the Wider Information Management System and the boundary between them created under Paragraph 4.2; and
 - 6.4.5 the Security Incident Management Process.
- 6.5 The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within twenty (20) Working Days of receipt and shall either issue the Supplier with:
- 6.5.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Buyer Data; or
 - 6.5.2 a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.
- 6.6 If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Buyer's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Buyer for review within ten (10) Working Days or such other timescale as agreed with the Buyer.
- 6.7 The Buyer may require, and the Supplier shall provide the Buyer and its authorised representatives with:
- 6.7.1 access to the Supplier Personnel;
 - 6.7.2 access to the Core Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and
 - 6.7.3 such other information and/or documentation that the Buyer or its authorised representatives may reasonably require,

to assist the Buyer to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Buyer Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Buyer in accordance with this Paragraph within ten (10) Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier

shall provide the Buyer with the access that it requires within twenty four (24) hours of receipt of such request.

7 COMPLIANCE REVIEWS

7.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph. Notwithstanding this general obligation, on a quarterly basis the Supplier shall also review the Customer protection measures in place in accordance with latest sector threats and market research, making proposals to the Buyer for improvements where appropriate to ensure continued security implementation in line with industry best practice. Where the Buyer agrees such improvement, the Security Management Plan shall be updated and re-issued.

7.2 The Supplier shall notify the Buyer within two (2) Working Days after becoming aware of:

7.2.1 a significant change to the components or architecture of the Information Management System;

7.2.2 a new risk to the components or architecture of the Information Management System;

7.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', or 'Critical' in accordance with the classification methodology set out in Paragraph 9.3 of Annex 1 to this Schedule;

7.2.4 a change in the threat profile;

7.2.5 a significant change to any risk component;

7.2.6 a significant change in the quantity of Personal Data held within the Service;

7.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or

7.2.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

7.3 Within ten (10) Working Days of such notifying the Buyer in accordance with Paragraph 7.2 or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Buyer for review and approval.

7.4 Where the Supplier is required to implement a change, including any change to the Core Information Management System and/or the Security Management Plan in accordance with the Required Changes Register, the Supplier shall effect such change at its own cost and expense.

8 CERTIFICATION REQUIREMENTS

8.1 The Supplier shall be certified as compliant with:

8.1.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

8.1.2 Cyber Essentials PLUS,

in all respects applicable to the Services, and shall provide the Buyer with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Buyer Data.

- 8.2 The Supplier shall comply with all applicable elements of the NIST Cyber Security Framework. Such compliance shall be subject to annual review by an appointed independent third party, such appointment to be agreed by the Buyer, to ensure the Supplier's achievement of a minimum of Maturity Level 4 in NIST PRISMA. Any appointment and/or review conducted pursuant to this Paragraph 8.2 shall be at the Supplier's cost. Unless otherwise expressly agreed in writing by the Buyer, the Supplier shall also ensure the compliance of all Sub-contractors with the obligation under this Paragraph 8.2.
- 8.3 Unless otherwise expressly agreed in writing by the Buyer, the Supplier shall ensure that each Sub-contractor is certified as compliant with:
- 8.3.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- 8.3.2 Cyber Essentials PLUS,
- in all respects applicable to the Services, and shall provide the Buyer with a copy of each such certificate of compliance before the Sub-contractor shall be permitted to receive, store or Process Buyer Data. Notwithstanding this, the Supplier shall ensure that each Sub-contractor is certified compliant with Cyber Essentials at a minimum.
- 8.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Buyer Data:
- 8.4.1 securely destroys Buyer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- 8.4.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Buyer,
- and evidence of any such destruction shall be provided promptly to the Buyer on request.
- 8.5 The Supplier shall provide the Buyer with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 8 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Buyer Data.
- 8.6 The Supplier shall notify the Buyer as soon as reasonably practicable and, in any event within two (2) Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Buyer, shall or shall procure that the relevant Sub-contractor shall:
- 8.6.1 immediately cease using the Buyer Data; and
- 8.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Buyer Data in accordance with the requirements set out in this Paragraph,
- and evidence of any action taken under this Paragraph 8.6 shall be provided promptly to the Buyer on request.
- 8.7 The Buyer may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 8. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

9 SECURITY TESTING

- 9.1 The Supplier shall, at its own cost and expense:
- 9.1.1 procure the testing of the Core Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**"):

- (a) prior to the first Operational Service Commencement Date and each subsequent Operational Service Commencement Date;
- (b) prior to implementation of a significant change;
- (c) if directed to do so by the Buyer; and
- (d) once every twelve (12) months during the Term;

9.1.2 conduct vulnerability scanning and assessments of the Core Information Management System monthly;

9.1.3 support testing of the Information Management System end to end solution deployed jointly by the Supplier and other Relevant Third Party Suppliers, on at least an annual basis and otherwise as requested by the Buyer from time to time;

9.1.4 conduct an assessment as soon as reasonably practicable and in any event within forty eight (48) hours following publication by a supplier of a vulnerability alert rated 'High' or 'Critical', or within five (5) Working Days following publication by a supplier of a vulnerability alert rated 'Medium' or 'low' affecting any software or other component of the Core Information Management System to determine whether the vulnerability affects the Core Information Management System;

9.1.5 conduct such other tests as are required by:

- (a) any Vulnerability Correction Plans;
- (b) the ISO27001 certification requirements;
- (c) the Security Management Plan; and
- (d) the Buyer following a Breach of Security or a significant change to the components or architecture of the Core Information Management System;

9.1.6 conduct Red Team and Purple Team testing on an annual basis; and

9.1.7 such other security tests, including GBEST testing as may be required by the Buyer from time to time,

(each a "**Security Test**").

9.2 The Supplier shall provide the Buyer and, where requested by the Buyer or otherwise required pursuant to Paragraph 9.4, the Central Security Monitoring Service, with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable, and in any case within ten (10) Working Days, after completion of each Security Test.

9.3 In relation to each IT Health Check, the Supplier shall:

9.3.1 agree with the Buyer the aim and scope of the IT Health Check;

9.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Buyer with a copy of the full report, which may be shared with the Central Security Monitoring Service at the Buyer's discretion.

9.4 in the event that any of the security Tests, scanning or assessments (including the IT Health Check report) carried out under Paragraph 9.1 identifies any vulnerabilities, or findings (which shall be categorised in accordance with the CVSS severity levels referred to at Paragraph 9.3 of Annex 1 or, to the extent any such vulnerability or finding does not fit within these categorisations, they shall be

categorised at the discretion of the Buyer), the Supplier shall notify the Buyer and provide the results, notification of the vulnerabilities or findings to the Central Security Monitoring Service and shall further:

9.4.1 prepare a remedial plan for approval by the Buyer (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability or finding identified:

- (i) how the vulnerability or finding will be remedied or, if the Supplier believes that the risk associated with the vulnerability should be tolerated, document the nature of the vulnerability and the argument for tolerating the risk, to be reviewed and determined in the absolute discretion of the Buyer;
- (ii) unless otherwise agreed in writing between the Parties, the date by which the vulnerability or finding will be remedied, which must be:
 - i. within five (5) days for those vulnerabilities categorised as "Critical";
 - ii. within fourteen (14) days for those vulnerabilities categorised as "High"; or
 - iii. within a timeframe agreed with the Buyer for those vulnerabilities categorised as "Other"; and
- (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Buyer, include a further IT Health Check) to confirm that the vulnerability or finding has been remedied;

9.4.2 comply with the Vulnerability Correction Plan; and

9.4.3 conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with providing evidence of such compliance promptly on request.

9.5 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the End to End Service and the date, timing, content and conduct of such tests shall be agreed in advance with the Buyer.

9.6 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within two (2) Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Buyer and the Central Security Monitoring Service with a copy of the test report and:

9.6.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

9.6.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Buyer.

9.7 The Supplier shall conduct such further tests of the Supplier System as may be required by the Buyer from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.

9.8 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

10 SECURITY MONITORING AND REPORTING

- 10.1 Subject always to its overarching obligation to work collaboratively with the Central Security Monitoring Service, the Supplier shall:
- 10.1.1 monitor the delivery of assurance activities;
 - 10.1.2 maintain and update the Security Management Plan in accordance with Paragraph 6;
 - 10.1.3 agree a document which presents the residual security risks to inform the Buyer's decision to give approval to the Supplier to Process, store and transit the Buyer Data;
 - 10.1.4 monitor security risk impacting upon the operation of the Service;
 - 10.1.5 report Breaches of Security in accordance with the approved Security Incident Management Process;
 - 10.1.6 provide to the Buyer a retrospective monthly report on all incidents, breaches of Security and near misses in respect of the Core Information Management System occurring in that month, to be reviewed by the Buyer's relevant governance body; and
 - 10.1.7 unless otherwise specified in this Schedule, agree with the Buyer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Buyer within twenty (20) Working Days of the Effective Date.

11 MALICIOUS SOFTWARE

- 11.1 The Supplier shall install and maintain an Anti-Malicious Solution or procure that an Anti-Malicious Solution is installed and maintained across the Core Information Management System and ensure that such Anti-Malicious Solution is configured to:
- 11.1.1 use machine learning/artificial intelligence (AI) to determine if machine behaviour represents a threat;
 - 11.1.2 use a behavioural AI engine to protect against file-less threats;
 - 11.1.3 detect zero-day attacks; and
 - 11.1.4 use cloud-based architecture without need for additional hardware or software.
- 11.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 11.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 11.2 shall be borne by the parties as follows:
- 11.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Buyer Data (whilst the Buyer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
 - 11.3.2 by the Buyer, in any other circumstance.

12 BREACH OF SECURITY

- 12.1 The parties recognise that, notwithstanding the provisions of this Agreement to avoid Breaches of Security, it is likely that Breaches will occur during the Term. The Supplier also recognises that management of Breaches of Security across the Wider Information Management System will be

dependent on collaboration with Relevant Third Party Suppliers and the Central Security Monitoring Service, and that time is of the essence in managing Breaches of Security.

- 12.2 If either party becomes aware of a Breach of Security, or an attempted or suspected Breach of Security, it shall notify the other in accordance with, and to the timescales established in, the Security Incident Management Process set out in the Security Management Plan.
- 12.3 The Security Incident Management Process set out in the Security Management Plan shall, as a minimum require:
 - 12.3.1 establishment of an incident response capability, with roles and responsibilities allocated to named and suitably qualified individuals (“Responders”), whose details shall be shared with the Buyer and the Central Security Monitoring Service, and continuity plans ensuring 24 x 7 resource availability;
 - 12.3.2 production and maintenance of incident response and recovery plans and strategies for all security incidents, including both identified and unidentified incidents, with a priority agreed with the Buyer based on the risk posted to the security of the Core Information Management System, and ensure that plans and strategies are communicated to Responders and are updated in light of lessons learned from any Breach of Security (such updates to be made as soon as possible and in any event within two (2) weeks of such incident);
 - 12.3.3 the sharing of threat intelligence with the Buyer, the Central Security Monitoring Service, Relevant Third Party Suppliers and other relevant parties including NSCS; and
 - 12.3.4 configuration of the Supplier’s monitoring system to identify any suspected Breach of Security.
- 12.4 In addition to the requirements in Paragraph 12.3, the Security Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:
 - 12.4.1 immediately make available suitably skilled and experienced resource to engage in diagnosis, investigation and response planning, in collaboration with the Buyer and other parties (including the Central Security Monitoring Service and/or Relevant Third Party Suppliers) as appropriate, even where the attempted or suspected Breach of Security is not believed to have arisen within the Core Information Management System;
 - 12.4.2 immediately communicate the Breach of Security or attempted or suspected Breach of Security to the Buyer, Central Security Monitoring Service and other parties as directed by the Buyer, providing such information on the matter as requested by those parties;
 - 12.4.3 identify whether it is a Breach of Security or attempted or suspected Breach of Security, categorise the type of incident against an incident response plan and implement that plan;
 - 12.4.4 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer or the Central Security Monitoring Service which shall be completed within such timescales as the Buyer or the Central Security Monitoring Service may reasonably require) necessary to:
 - (a) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Information Management System against any such potential or attempted Breach of Security;
 - (c) apply a tested mitigation against any such Breach of Security or potential or attempted Breach of Security;

- (d) communicate its recovery activities to the Buyer and the Central Security Monitoring Service and, to the extent required to avoid impact on the Wider information Management System, to Relevant Third Party Suppliers; and
- (e) support any subsequent investigation and preserve evidence as necessary for legal, disciplinary or other reason, including where necessary using forensic analysis techniques; and

12.4.5 as soon as reasonably practicable and, in any event, within ten (10) Working Days, following the Breach of Security or attempted Breach of Security, provide to the Buyer and Central Security Monitoring Service full details of the Breach of Security or attempted Breach of Security, including where required by the Buyer or Central Security Monitoring Service, a root cause and impact analysis and/or event data about attempted connections by unauthorised personnel, devices or software, and updating security incident response plans to establish the severity and to prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure.

12.5 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Core Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Buyer.

ANNEX 1: SECURITY REQUIREMENTS

1 SECURITY CLASSIFICATION OF INFORMATION

If the provision of the Services requires the Supplier to Process Buyer Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Buyer from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2 END USER DEVICES

2.1 The Supplier shall ensure that any Buyer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.

2.2 The Supplier shall ensure that any device forming part of the Core Information Management System which is used to Process Buyer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>.

3 NETWORKING

The Supplier shall protect the confidentiality, integrity and availability of Buyer Data, ensuring it is encrypted in transit and at rest. For the avoidance of doubt, any Buyer Data which the Supplier causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

4 PERSONNEL SECURITY

4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services and shall be subject to repeat checks periodically according to the Buyer's policy from time to time. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard as in force from time to time including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record.

4.2 The Buyer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Buyer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check or any equivalent or similar requirement in place from time to time), and shall implement and maintain those checks as notified by the Buyer. Roles which are likely to require additional vetting and a specific national security vetting clearance include:

4.2.1 System administrators whose role would provide those individuals with privileged access to IT systems which Process Buyer Data or data which, if it were Buyer Data, would be classified as OFFICIAL-SENSITIVE;

4.2.2 Supplier Personnel with Enhanced Privileges (root, system administrator, database administrator or equivalent) which enable access to live Bulk Customer Data or copies of the live Bulk Customer Data;

4.2.3 Supplier Personnel working in an information security role or with responsibility for managing information security personnel;

4.2.4 Supplier Personnel working in a financial crime role where those individuals have access to details relating to criminal investigations or with responsibility for managing financial crime personnel; and

- 4.2.5 Supplier Personnel roles with non-administrative/privileged access to Bulk Customer Data.
- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Buyer Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Buyer Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Buyer Data revoked within one (1) Working Day.
- 4.6 The Supplier shall ensure that Supplier Personnel that have access to the Sites, the IT Environment or the Buyer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Buyer Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Personnel under Paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Buyer Data (“**phishing**”).
- 4.8 The Supplier report to the Buyer following such periodical checks and assurance activities as referred to in Paragraph 4.1, to verify that:
 - 4.8.1 appropriate physical security measures are in place; and
 - 4.8.2 all cyber security staff and privileged Users and Supplier Personnel understand their roles and responsibilities.

5 IDENTITY, AUTHENTICATION AND ACCESS CONTROL

- 5.1 The Supplier shall be responsible for identity, authentication and access control across the Core Information Management System. This shall include, but not be limited to, ensuring that:
 - 5.1.1 identities and credentials are issued, managed, verified, validated, revoked and audited for Customers, authorised devices, Users and processes;
 - 5.1.2 identities are proofed and bound to credentials and asserted in interactions;
 - 5.1.3 Customers, Users, devices and other assets (including connection of Services to the Integration Platform) are authenticated commensurate with the risk of the transaction in line with the Buyer’s requirements, including implementation of strong multifactor authentication for all Users and Customers and validation of the accuracy of data being inputted by Customers;
 - 5.1.4 Customers can verify that they are interacting with an authorised service representing the Buyer, and implementing best practice measures to help them to differentiate between authorised communications and fraudulent communications (including, but not limited to, links in SMS messages issued to Customers);
 - 5.1.5 remote access to the Core Information Management System, including remote maintenance, is securely managed using multifactor authentication and performed in a manner that prevents unauthorised access and abuse of administrative access;
 - 5.1.6 maintenance of organisational assets is approved, logged and performed in a manner that prevents unauthorised access and abuse of administrative access;

- 5.1.7 the Services are delivered from locations which are assessed and approved for compliance to ISO 27001 and HMG standards; and
 - 5.1.8 physical access to assets and the sites from which Services are delivered is managed and protected, and limited to identified, authorised and authenticated personnel.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System, using role-based access controls, and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require, and the principle of separation of duties to reduce the potential damage from breach of trust by one person. The Supplier shall review and where necessary revoke access permissions where no longer needed, subject to Buyer approval. The Supplier shall revoke access rights of Users immediately on leaving their role.
- 5.3 In addition to the obligation under Paragraph 5.2 of this Annex 1, the Supplier shall ensure that Customers' access and ability to carry out activities through the Supplier System and on any Sites (as appropriate) is limited such that they have the ability to act only within their proper entitlement and to ensure appropriate prohibitions and restrictions to prevent activities outside of the boundary of their entitlement.
- 5.4 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Buyer on request.
- 5.5 The Supplier shall:
- 5.5.1 proactively monitor the internet to identify any fake or scam websites attempting to impersonate the Buyer and/or associated authorised services, promptly reporting any such identified sites to the Buyer and to a third party scam website reporting service, ensuring action is taken as necessary to remove any malicious sites;
 - 5.5.2 forward any suspicious email communications received to a third party reporting service, ensuring action is taken as necessary to investigate and remove scam email addresses and websites;
 - 5.5.3 implement measures in line with relevant NCSC guidance to counter use of fake emails purporting to come from within the IT Environment, including use of the latest versions of DMARC, SPF and DKIM;
 - 5.5.4 monitor the physical environment to detect potential instances of unauthorised access or other security events and promptly report any such potential events to the Central Security Monitoring Service; and
 - 5.5.5 monitor Supplier Personnel activity to detect potential instances of unauthorised access or potential or attempted Breaches of Security.

6 DATA DESTRUCTION OR DELETION

- 6.1 The Supplier shall:
- 6.1.1 prior to securely sanitising any Buyer Data or when requested the Supplier shall provide the Buyer with all Buyer Data in an agreed open format;
 - 6.1.2 have documented processes to ensure the availability of Buyer Data in the event of the Supplier ceasing to trade;
 - 6.1.3 securely erase in a manner agreed with the Buyer any or all Buyer Data held by the Supplier when requested to do so by the Buyer;
 - 6.1.4 securely destroy in a manner agreed with the Buyer all media that has held Buyer Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Buyer; and

6.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation, and shall promptly provide evidence of compliance with any obligation under this Paragraph 6 as requested by the Buyer.

7 AUDIT AND PROTECTIVE MONITORING

7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by Users of the Core Information Management System or machine behaviour, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Buyer Data.

7.2 Notwithstanding the requirement on audit records in Paragraph 7.1 above, the Supplier shall:

7.2.1 within five (5) Working Days of the end of each month during the Term, provide the Buyer with a written report which details both patched and outstanding vulnerabilities in the Core Information Management System, the elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report and any failure to comply with the timescales set out in Paragraph 9.4 for applying patches to vulnerabilities in the Core Information Management System; and

7.2.2 provide to the Buyer a monthly report on the presence of all publicly disclosed vulnerabilities, or those notified by the Buyer, affecting systems directly involved in the delivery of the Services. For vulnerabilities classed as high severity (7 or higher) by the CVSS, the Supplier shall notify the Buyer within forty eight (48) hours of disclosure. For medium severity vulnerabilities, the Supplier shall notify the Buyer within five (5) Working Days of disclosure.

7.3 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the Core Information Management System and the Supplier shall continually improve monitoring processes in line with Good Industry Practice and in accordance with any instruction from the Buyer.

7.4 Retention periods for audit records and event logs must be agreed with the Buyer and documented in the Security Management Plan.

8 LOCATION OF BUYER DATA

The Supplier shall not and shall procure that none of its Sub-contractors Process Buyer Data outside the United Kingdom without the prior written consent of the Buyer, which may be subject to conditions.

9 THREATS, VULNERABILITIES AND CORRECTIVE ACTION

9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the Core Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Buyer.

9.2 The Buyer and the Supplier also acknowledge the importance of remaining alert to the range of threats posed to the Service by threat actors, and the imperative to understand and counteract these threats as far as practicable.

9.3 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'High', 'Medium' and 'Low' by aligning these categories to the vulnerability scoring using the National Vulnerability Database's 'Vulnerability Severity Ratings' (CVSS 3.0 scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>).

- 9.4 Subject to Paragraph 9.5, the Supplier shall apply, or procure the application of security patches to vulnerabilities in the Core Information Management System within:
- 9.4.1 five (5) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.4.2 fourteen (14) days after the public release of patches for those vulnerabilities categorised as 'High'; and
 - 9.4.3 within a timeframe agreed with the Buyer following the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.5 The timescales for applying patches to vulnerabilities in the Core Information Management System set out in Paragraph 9.4 shall be extended where:
- 9.5.1 the Supplier can demonstrate that a vulnerability in the Core Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.4 if the vulnerability becomes exploitable within the context of the Services;
 - 9.5.2 the application of a 'Critical' or 'High' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 9.5.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 9.6 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Buyer in writing. All components used to deliver the Services, including hardware and COTS Software should be maintained at mainstream supported levels.
- 9.7 The Supplier shall provide a means for Users and Customers alike to report security vulnerabilities or issues, using such feedback to inform future development of Services.

10 SECURE ARCHITECTURE

- 10.1 The Supplier shall ensure that all Services are designed, developed and deployed:
- 10.1.1 to be 'Secure by Default' in line with NCSC guidance;
 - 10.1.2 in accordance with the NIST Secure Software Development Framework (SSDF);
 - 10.1.3 where Customer-facing:
 - (a) application development, in compliance with the OWASP Application Security Verification Standard;
 - (b) mobile application development, in compliance with the OWASP Mobile Application Security Verification Standard,
 and in each case validated through the software development and deployment systems and evidenced to the Buyer through the security reporting process.
- 10.2 The Supplier shall design the Core Information Management System in accordance with:

- 10.2.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
- 10.2.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- 10.2.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
- (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that User data transiting networks should be adequately protected against tampering and eavesdropping;
 - (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that User data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised User of the Service should not be able to affect the Service or data of another;
 - (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
 - (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
 - (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Buyer Data and/or the Buyer System that those personnel be subject to appropriate security screening and regular security training;
 - (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
 - (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
 - (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Buyer to securely manage the Buyer's use of the Service;
 - (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
 - (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
 - (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;

- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Buyer with the audit records it needs to monitor access to the Service and the Buyer Data held by the Supplier and/or its Sub-contractors; and
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

10.3 The Supplier shall ensure digital design and development activities are undertaken securely so that deployments or any significant changes are done securely and do not pose a security threat to the Buyer's wider ecosystem.

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

1 APPLICATION OF ANNEX

- 1.1 This Annex applies to all Sub-contractors that Process Buyer Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Buyer; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Buyer Data.

2 DESIGNING AND MANAGING SECURE SOLUTIONS

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to the Buyer on the Buyer's request.

3 DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The Sub-contractor must not Process any Buyer Data outside the United Kingdom. The Buyer may permit the Sub-contractor to Process Buyer Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must securely erase any or all Buyer Data held by the Sub-contractor when requested to do so by the Buyer, and securely destroy all media that has held Buyer Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Buyer.

4 PERSONNEL SECURITY

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services and shall be subject to repeat checks periodically according to the Buyer's policy from time to time.
- 4.2 Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.
- 4.3 The Sub-contractor must, if the Buyer requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Buyer Data containing Personal Data above certain volumes specified by the Buyer, or containing Special Category Personal Data.
- 4.4 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of eighteen (18) years must undergo Disclosure and Barring Service checks.

- 4.5 The Supplier and the Sub-contractor shall review the roles and responsibilities of the Sub-contractor staff who will be involved in the management and/or provision of the Services in order to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check or any equivalent or similar requirement in place from time to time), and shall implement and maintain those checks. Roles which are likely to require additional vetting and a specific national security vetting clearance include:
- 4.5.1 System administrators whose role would provide those individuals with privileged access to IT systems which Process Buyer Data or data which, if it were Buyer Data, would be classified as OFFICIAL-SENSITIVE;
 - 4.5.2 Sub-contractor staff with Enhanced Privileges (root, system administrator, database administrator or equivalent) which enable access to live Bulk Customer Data or copies of the live Bulk Customer Data;
 - 4.5.3 Sub-contractor staff working in an information security role or with responsibility for managing information security personnel;
 - 4.5.4 Sub-contractor staff working in a financial crime role where those individuals have access to details relating to criminal investigations or with responsibility for managing financial crime personnel; and
 - 4.5.5 Sub-contractor staff roles with non-administrative/privileged access to Bulk Customer where:
 - (a) access is to full copies of live Bulk Customer Data that allows individuals to be identified;
 - (b) access is not being controlled by the application to single records only; and
 - (c) no audit trail of access to information records is created.
- 4.6 The Sub-contractor shall not permit Sub-contractor staff who fail the security checks required by this Paragraph 4 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.7 The Sub-contractor shall ensure that Sub-contractor staff are only granted such access to Buyer Data as is necessary to enable the Sub-contractor staff to perform their role and to fulfil their responsibilities.
- 4.8 The Sub-contractor shall ensure that Sub-contractor staff who no longer require access to the Buyer Data (e.g. they cease to be employed by the Sub-contractor), have their rights to access the Buyer Data revoked within one (1) Working Day.
- 4.9 The Sub-contractor shall ensure that Sub-contractor staff that have access to the Sites, the IT Environment or the Buyer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Buyer Data.
- 4.10 The Sub-contractor shall ensure that the training provided to Sub-contractor staff under Paragraph 4.8 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Buyer Data (“**phishing**”).

5 END USER DEVICES

- 5.1 The Sub-contractor shall ensure that any Buyer Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner’s Office guidance on implementing encryption, which can be found at

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.

- 5.2 The Sub-contractor shall ensure that any device used to Process Buyer Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

6 NETWORKING

The Sub-contractor shall ensure that any Buyer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

7 PATCHING AND VULNERABILITY SCANNING

- 7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8 THIRD PARTY SUB-CONTRACTORS

- 8.1 The Sub-contractor must not transmit or disseminate the Buyer Data to any other person unless specifically authorised by the Buyer. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Buyer Data where the licence terms of that software purport to grant the licensor rights to Process the Buyer Data greater than those rights strictly necessary for the use of the software.

ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE

Security Management Plan Template (Assurance)

[Project/Service and Supplier Name]

1 EXECUTIVE SUMMARY

<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>

2 SYSTEM DESCRIPTION

2.1 Background

<A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>

2.2 Organisational Ownership/Structure

<Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>

2.3 Information assets and flows

<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>

2.4 System Architecture

<A description of the physical system architecture, to include the system management. A diagram will be needed here.>

2.5 Users

<A brief description of the system Users, to include HMG Users as well as any service provider Users and system managers. If relevant, security clearance level requirements should be included.>

2.6 Locations

<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>

2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, I AO, Security manager, Accreditor.>

3 RISK ASSESSMENT

3.1 Assurance Scope

<This section describes the scope of the Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SIRO/SRO and included here.>

3.3 Business impact assessment

<A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks.>

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The Service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal Users could maliciously or accidentally alter bank details.	Medium-High	Customers' bank details can be altered as part of the normal business function.	C12: System administrators hold SC clearance. C13: All changes to Customer information are logged and audited. C14: Letters are automatically sent to Customers' home addresses when bank details are altered. C15: Staff awareness training	Low

3.5 Controls

<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system, which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

3.6 Residual risks and actions

<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>

4 IN-SERVICE CONTROLS

4.1 <This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:

- 4.1.1 information risk management and timescales and triggers for a review;
- 4.1.2 contractual patching requirements and timescales for the different priorities of patch;
- 4.1.3 protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;
- 4.1.4 configuration and change management;
- 4.1.5 incident management;
- 4.1.6 vulnerability management;
- 4.1.7 user access management; and
- 4.1.8 data sanitisation and disposal.>

5 SECURITY OPERATING PROCEDURES (SYOPS)

<If needed any SyOps requirements should be included and referenced here.>

6 MAJOR HARDWARE AND SOFTWARE AND END OF SUPPORT DATES

<This should be a table which lists the end of support dates for hardware and Software products and components. An example table is shown below.>

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7 INCIDENT MANAGEMENT PROCESS

<The suppliers' process, as agreed with the Buyer/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Buyer/Customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>

8 SECURITY REQUIREMENTS FOR USER ORGANISATIONS

<Any security requirements for connecting organisations or departments should be included or referenced here.>

9 REQUIRED CHANGES REGISTER

<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party Supplier XXXX will be performing the print capability.	Buyer name	11/11/2018	Jul-2019	Open

10 PERSONAL DATA PROCESSING STATEMENT

<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Buyer Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Buyer Data against a Security Breach including a Personal Data Breach.>

11 ANNEX A. ISO27001 AND/OR CYBER ESSENTIAL PLUS CERTIFICATES

<Any certifications relied upon should have their certificates included.>

12 ANNEX B. CLOUD SECURITY PRINCIPLES ASSESSMENT

<A spreadsheet may be attached.>

13 ANNEX C. PROTECTING BULK DATA ASSESSMENT IF REQUIRED BY THE BUYER/CUSTOMER

<A spreadsheet may be attached.>

14 ANNEX E. LATEST ITHC REPORT AND VULNERABILITY CORRECTION PLAN

SCHEDULE 2.5

NOT USED

SCHEDULE 3 - BUYER RESPONSIBILITIES

1 INTRODUCTION

- 1.1 The responsibilities of the Buyer set out in Attachment 3 (*Buyer Responsibilities*) of the Order Form shall constitute the Buyer Responsibilities under this Contract. Any obligations of the Buyer in Attachment 2.1 (*Services Description*) of the Order Form and Attachment 4.1 (*Supplier Solution*) of the Order Form shall not be Buyer Responsibilities and the Buyer shall have no obligation to perform any such obligations unless they are specifically stated to be “Buyer Responsibilities” and cross referenced in the table in Attachment 3 (*Buyer Responsibilities*) of the Order Form.
- 1.2 The responsibilities specified within this Schedule and Attachment 3 (*Buyer Responsibilities*) of the Order Form shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

- 2.1 The Buyer shall:
- 2.1.1 perform those obligations of the Buyer which are set out in Attachment 3 (*Buyer Responsibilities*) of the Order Form;
 - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Buyer’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
 - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Buyer’s roles and duties under this Contract as defined in the Implementation Plan;
 - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Buyer and is authorised for release by the Buyer; and
 - 2.1.5 procure for the Supplier such agreed access and use of the Buyer Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Buyer's normal working hours on each Working Day or as otherwise agreed by the Buyer (such agreement not to be unreasonably withheld or delayed).

3 SPECIFIC OBLIGATIONS

The Buyer shall, in relation to this Contract, perform the Buyer’s responsibilities identified as such in Attachment 3 (*Buyer Responsibilities*) in the Order Form.

SCHEDULE 4.1 - SUPPLIER SOLUTION

Details of the Supplier's Solution are set out in Attachment 4.1 (*Supplier Solution*) of the Order Form.

SCHEDULE 4.2 - COMMERCIALLY SENSITIVE INFORMATION

Details of the information considered by the Supplier to be Commercially Sensitive Information is set out in Attachment 4.2 (*Commercially Sensitive Information*) of the Order Form.

SCHEDULE 4.3 - NOTIFIED KEY SUB-CONTRACTORS

In accordance with Clause 15.3 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table in Attachment 4.3 (*Notified Key Sub-Contractors*) of the Order Form.

SCHEDULE 4.4 - THIRD PARTY CONTRACTS

The contracts listed in Attachment 4.4 (*Third Party Contracts*) of the Order Form constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.

SCHEDULE 5 – SOFTWARE AND TRADE MARKS

THE SOFTWARE

The Software listed in Attachment 5 (*Software and Trade Marks*) of the Order Form is licensed to the Buyer in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Transfer and Licences Granted by the Supplier*).

The licence granted by the Buyer to the Supplier to use the Trade Marks in relation to the provision of the Services pursuant to Clause 19 shall be subject to the Trade Mark terms of use set out in Attachment 5 (*Software and Trade Marks*) of the Order Form.

ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

[Supplier letterhead]

[insert Buyer

name and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [*insert date*] in respect of [*brief summary of subject of the Contract*] (the "Contract"). Capitalised expressions used in this letter have the same meanings as in the Contract.

In accordance with Clause 17.5.2 of the Contract we confirm that:

- 1 the Buyer is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences"); and
- 2 notwithstanding any provision to the contrary in the Licences, it is agreed that the Buyer may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.5.2 of the Contract.

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the “**Sub licensee**”); and
- (2) [*insert name*] of [*insert address*] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [*insert name of Buyer*] (the “**Buyer**”) and the Supplier are party to a contract dated [*insert date*] (the “**Contract**”) for the provision by the Supplier of [*insert brief description of services*] to the Buyer.
- (B) The Buyer wishes to grant a sub licence to the Sub licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to the Contract (the “**Sub licence**”).
- (C) It is a requirement of the Contract that, before the Buyer grants such sub licence to the Sub licensee, the Sub licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Contract to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

Confidential Information means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub licensee pursuant to or in connection with the Sub licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub licensed to the Sub licensee pursuant to the Sub licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub licence;
- (c) other Information provided by the Buyer pursuant to this Contract to the Sub licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub licensee’s attention or into the Sub licensee’s possession in connection with the Sub licence; and
- (d) Information derived from any of the above,

but not including any Information that:

- (a) was in the possession of the Sub licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or
- (c) was independently developed without access to the Information;

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

Sub licence has the meaning given to that expression in recital (B) to this Contract.

1.2 In this Contract:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Contract) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- 1.2.6 references to Clauses are to clauses of this Contract.

2 CONFIDENTIALITY OBLIGATIONS

2.1 In consideration of the Buyer entering into the Sub licence, the Sub licensee shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Contract;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

- (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub licensee) from any computer, word processor, voicemail system or any other device; and
- (c) make no further use of any Confidential Information.

3 PERMITTED DISCLOSURES

- 3.1 The Sub licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub licence; and
 - 3.1.2 have been informed by the Sub licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Contract.
- 3.2 The Sub licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub licensee shall, if the circumstances permit:
 - 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4 GENERAL

- 4.1 The Sub licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:
 - 4.2.1 to grant the Sub licensee any licence or rights other than as may be expressly stated in the Sub licence;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub licence.
- 4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub licensee of any of the provisions of this Contract. Accordingly, the Sub licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as

any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 4.5 The maximum liability of the Sub licensee to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.
- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 NOTICES

5.1 Any notice to be given under this Contract (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

5.2.2 if to be given to the Sub licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6 GOVERNING LAW

6.1 This Contract shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Contract whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Contract.

IN WITNESS of the above this Contract has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____ Date:

Name: Position:

For and on behalf of [*name of Sub licensee*]

Signature: _____ Date:

Name:

Position:

SCHEDULE 6.1 - IMPLEMENTATION PLAN

1 INTRODUCTION

1.1 This Schedule:

1.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and

1.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2 OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Attachment 6.1 of the Order Form.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 34 (*Buyer Cause*)).

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Buyer for approval within twenty (20) Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

(a) the completion of each design document;

(b) the completion of the build phase;

(c) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and

(d) training and roll-out activities;

3.2.3 clearly outlines all the steps required to implement the Milestones to be achieved in the next fifteen (15) months, together with a high level plan for the rest of the programme, in conformity with the Buyer Requirements;

3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and

3.2.5 is produced using a software tool as specified, or agreed by the Buyer.

3.3 Prior to the submission of the draft Detailed Implementation Plan to the Buyer in accordance with Paragraph 3.1, the Buyer shall have the right:

3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

- (a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Buyer shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Buyer.
- 3.5 If the Buyer rejects the draft Detailed Implementation Plan:
 - 3.5.1 the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Buyer for the Buyer's approval within twenty (20) Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Buyer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Buyer's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 4.1 Following the approval of the Detailed Implementation Plan by the Buyer:
 - 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to the Buyer every three (3) months starting three (3) months from the Effective Date;
 - 4.1.2 without prejudice to Paragraph 4.1.1, the Buyer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Buyer within twenty (20) Working Days of receiving such a request from the Buyer (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - 4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Buyer not less than five (5) Working Days in advance of each meeting of the Service Management Board.

- 4.2 Save for any amendments which are of a type identified and notified by the Buyer (at the Buyer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 34 (*Buyer Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Buyer.

5 GOVERNMENT REVIEWS

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

The Outline Implementation Plan is detailed in Attachment 6.1 (*Outline Implementation Plan*) of the Order Form.

SCHEDULE 6.2 - TESTING PROCEDURES

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Component means any constituent parts of the infrastructure for a Service, hardware or Software;

End to End Test means the coordinated testing of a beginning to end flow of business processes across multiple services provided by multiple suppliers, as opposed to testing only individual steps or only the Supplier's Services or an element of the Supplier's Services;

Material Test Issue means a Test Issue of Severity Level 1 or Severity Level 2;

Severity Level means the level of severity of a Test Issue, the criteria for which are described in Annex 1;

Test Certificate means a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable has satisfied its relevant Test Success Criteria;

Test Issue means any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);

Test Issue Threshold in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;

Test Issue Management Log means a log for the recording of Test Issues as described further in Paragraph 9.1;

Test Plan means a plan:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the achievement of Milestones,

as described further in Paragraph 5;

Test Reports means the reports to be produced by the Supplier setting out the results of Tests;

Test Specification means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;

Test Strategy means a strategy for the conduct of Testing as described further in Paragraph 4;

Test Success Criteria in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;

Test Witness means any person appointed by the Buyer pursuant to Paragraph 10.1; and

Testing Procedures means the applicable testing procedures set out in this Schedule and Test Success Criteria set out in Attachment 6.2 (*Test Success Criteria*) of the Order Form.

2 RISK

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

- 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or

- 2.1.2 affect the Buyer's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Buyer to Proceed), the Supplier shall remain solely responsible for ensuring that:

- 2.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Buyer Requirements;
- 2.2.2 the Services are implemented in accordance with this Contract; and
- 2.2.3 each Target Performance Level is met from the relevant Operational Service Commencement Date.

3 TESTING OVERVIEW

3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The Supplier shall not submit any Deliverable for Testing:

- 3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
- 3.2.2 until the Buyer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
- 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

3.4 Prior to the issue of a Test Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3.5 Any Disputes between the Buyer and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

4.2 The final Test Strategy shall include:

- 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
- 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
- 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;

- 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- 4.2.5 the procedure to be followed to sign off each Test;
- 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- 4.2.7 the names and contact details of the Buyer's and the Supplier's Test representatives;
- 4.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Buyer and/or third party involvement in the conduct of the Tests;
- 4.2.9 the technical environments required to support the Tests; and
- 4.2.10 the procedure for managing the configuration of the Test environments.

5 TEST PLANS

- 5.1 The Supplier shall develop Test Plans and submit these for the approval of the Buyer as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
 - 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - 5.2.2 a detailed procedure for the Tests to be carried out, including:
 - (a) the timetable for the Tests, including start and end dates;
 - (b) the Testing mechanism;
 - (c) dates and methods by which the Buyer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (e) the format and an example of Test progress reports and the process with which the Buyer accesses daily Test schedules;
 - (f) the process which the Buyer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (g) the Test Schedule;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 5.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Buyer in the Test Plans.

6 TEST SUCCESS CRITERIA

6.1 The Test Success Criteria for:

6.1.1 each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Attachment 6.2 (*Test Success Criteria*) of the Order Form; and

6.1.2 all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;

7.2.2 a plan to make the resources available for Testing;

7.2.3 Test scripts;

7.2.4 Test pre-requisites and the mechanism for measuring them; and

7.2.5 expected Test results, including:

(a) a mechanism to be used to capture and record Test results; and

(b) a method to process the Test results to establish their content.

8 TESTING

8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10

8.3 The Supplier shall notify the Buyer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests, except where the Buyer has specified in writing that such attendance is not necessary.

8.4 The Buyer may raise and close Test Issues during the Test witnessing process.

8.5 The Supplier shall provide to the Buyer in relation to each Test:

8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
 - 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9 TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 9.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10 TEST WITNESSING

- 10.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
- 10.3.1 shall actively review the Test documentation;
 - 10.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 10.3.3 shall not be involved in the execution of any Test;
 - 10.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;

- 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 10.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2.2 (*Records, Reports, Audits & Open Book Data*), the Buyer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Buyer will give the Supplier at least five (5) Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Buyer will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Buyer witnessing Tests and demonstrations of the Deliverables to the Buyer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Buyer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall:
 - 11.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - 11.6.2 subsequently prepare a written report for the Supplier detailing its concerns,and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 11.7 In the event of an inadequate response to the Buyer's report from the Supplier, the Buyer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

12 OUTCOME OF TESTING

- 12.1 The Buyer shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
- 12.2.1 the Buyer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - 12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - 12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 30.1 (*Rectification Plan Process*).
- 12.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 13.1 The Buyer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 13.1.1 the issuing by the Buyer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 13.1.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).
- 13.3 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out:
- 13.3.1 the applicable Test Issues ; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Buyer's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 30.1 (*Rectification Plan Process*) and the Buyer shall refuse to issue a Milestone Achievement Certificate where:
- 13.5.1 there is one or more Material Test Issue(s); or
 - 13.5.2 the information required under Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form has not been uploaded to the Virtual Library in accordance with Paragraph 4 of that Schedule 8.4 (*Reports and Records Provision*).
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to

issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within ten (10) Working Days of receipt of the Buyer's report pursuant to Paragraph 13.3); and

13.6.2 where the Buyer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

14 END TO END TESTS

14.1 End to End Tests shall be carried out in accordance with the provisions of Paragraph 3 of Attachment 6.2 (*Test Success Criteria*) in the Order Form.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

- 1 **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 2 **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - 2.1 causes a Component to become unusable;
 - 2.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.3 has an adverse impact on any other Component(s) or any other area of the Services;
- 3 **Severity Level 3 Test Issue:** a Test Issue which:
 - 3.1 causes a Component to become unusable;
 - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3 has an impact on any other Component(s) or any other area of the Services,
but for which, as reasonably determined by the Buyer, there is a practicable workaround available;
- 4 **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 5 **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs

TEST CERTIFICATE

Deliverables: **[insert description of Deliverables]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Contract.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 6.2 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

*delete as appropriate

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Buyer]**

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Contract.

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 6.2 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

*delete as appropriate

Yours faithfully,

[Name]

[Position]

acting on behalf of **[Buyer]**

ANNEX 4: TEST SUCCESS CRITERIA

See the information in Attachment 6.2 (*Test Success Criteria*) of the Order Form.

SCHEDULE 7.1 - CHARGES AND INVOICING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Achieved Profit Margin means the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;

Anticipated Contract Life Profit Margin means the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;

Capped ADR in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, [REDACTED]

Certificate of Costs means a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;

Costs means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer's national insurance contributions;
 - (iii) Employer Pension Contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Buyer;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Buyer or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) amounts payable under Schedule 7.3 (*Benchmarking*); and
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

The Employer Pension Contributions means:

- (a) in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (*Annual administration charges covering core Services*), 7.1.5 (*Employer contributions*), 7.1.7 (*the ASLC*) and 7.1.8 (*Flat charges applicable to the Partnership Pension Account*) of the Admission Contract (or equivalent clause references in the current version of the Admission Contract); and/or
- (b) such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Buyer in writing to constitute 'Employer Pension Contributions';

European Standard in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;

Forecast Contingency Costs means the costs which the Supplier forecasts may be incurred in relation to the Allowable Assumptions that are identified in the Pricing Response Template, such costs being those set out in the column headed 'Forecast Contingency Costs' in the Pricing Response Template (as such costs are updated from time to time);

Guaranteed Maximum Price in relation to a Milestone, one hundred and ten percent (110%) of the Target Price for the relevant Milestone;

Incurred Costs in relation to a Milestone, the sum of:

- (a) the fixed day costs set out in the Pricing Response Template multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and
- (b) any amount that would fall within limbs (b) or (c) of the definition of "Costs" (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

Indexation" and "Index means the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;

Maximum Permitted Profit Margin means the Anticipated Contract Life Profit Margin plus five percent (5%);

Milestone Group has the meaning given in Paragraph 1.5 of Part B;

Overhead means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs" or the day cost set out in the Pricing Response Template;

Pass Through Items means those items identified in Paragraph 10 of this Schedule and any other items which the Parties agree should be charged for on a pass through basis which shall be charged to the Buyer at cost without the application of the Supplier Profit Margin or any other charges;

Pricing Response Template means the excel spreadsheet, attached to Attachment 7.1 (*Charges*) of the Order Form which sets out the Charges and payment profile for the Charges, as amended in accordance with this Schedule;

Reimbursable Expenses means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:

- (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

Reward Pot as defined in the Collaboration Agreement;

Supplier Profit in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

Supplier Profit Margin in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

Supporting Documentation means sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

Target Cost has the meaning given in Paragraph 3.1 of Part A;

Target Price has the meaning given in Paragraph 3.1 of Part A;

Verification Period in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in the Pricing Response Table;

Universal Standing Charge the amount to be determined by the Buyer on each anniversary of the Agreement and used to determine the Reward Pot;

Work Day means seven and a half (7.5) Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and

Work Hours means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.

PART A: PRICING

1 PRICING RESPONSE TEMPLATE

- 1.1 The Pricing Response Template is set out in Attachment 7.1 (*Charges*) of the Order Form.
- 1.2 All changes to the Pricing Response Template shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 34 (*Buyer Cause*)).

2 APPLICABLE PRICING MECHANISM

- 2.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in the Pricing Response Template as more particularly set out in this Schedule.
- 2.2 The Pricing Response Template sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
 - 2.2.1 “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - 2.2.2 “**Guaranteed Maximum Price with Target Cost**”, in which case the provisions of Paragraph 4 shall apply;
 - 2.2.3 “**Fixed Price**”, in which case the provisions of Paragraph 5 shall apply; or
 - 2.2.4 “**Firm Price**”, in which case the provisions of Paragraph 6 shall apply.
- 2.3 The Pricing Response Template sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
 - 2.3.1 “**Time and Materials**”, in which case the provisions of Paragraph 3 shall apply;
 - 2.3.2 “**Volume Based**” pricing, in which case the provisions of Paragraph 7 shall apply; or
 - 2.3.3 “**Fixed Price**” in which case the provisions of Paragraph 5 shall apply.

3 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 3.1 Where the Pricing Response Template indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
 - 3.1.1 the day rates set out in the relevant section of the Pricing Response Template, provided that the Supplier (or its Sub-contractor) shall:
 - (a) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (b) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in the Pricing Response Template unless the Supplier has obtained the Buyer’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Buyer immediately in the event of any risk that the cap may be exceeded and the Buyer shall instruct the Supplier on how to proceed;
 - (c) unless otherwise agreed by the Buyer in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
 - (i) the total number of days expended by the Supplier in relation to the relevant Milestone; or

- (ii) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and

- (d) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

3.1.2 the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Buyer requests copies of such records, the Supplier shall make them available to the Buyer within ten (10) Working Days of the Buyer's request.

3.2 The Supplier shall be entitled to Index the rates set out in the Pricing Response Template, but any caps set out in the Pricing Response Template shall not be subject to Indexation.

4 GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS

4.1 Where the Pricing Response Template indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in the Pricing Response Template.

4.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Buyer and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

TP	is the Target Price for the relevant Milestone;
TC	is the Target Cost for the relevant Milestone; and
IC	is the Incurred Costs relating to the relevant Milestone.

4.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Buyer and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Buyer for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in the Pricing Response Template (the "**Guaranteed Maximum Price**"). Represented numerically:

4.3.1 if:

- (a) $\text{IC} > \text{TC}$; and
- (b) $\text{TP} + ((\text{IC} - \text{TC})/2) < \text{GMP}$,

then Milestone Payment = $\text{TP} + ((\text{IC} - \text{TC})/2)$; or

4.3.2 if:

- (a) $\text{IC} > \text{TC}$; and

$$(b) \quad TP + ((IC - TC)/2) \geq GMP,$$

then Milestone Payment = GMP,

where:

IC	is the Incurred Costs relating to the relevant Milestone;
TC	is the Target Cost for the relevant Milestone;
TP	is the Target Price for the relevant Milestone; and
GMP	is TP * 1.1, being the Guaranteed Maximum Price for the relevant Milestone.

- 4.4 The Supplier shall be entitled to Index the day costs set out in the Pricing Response Template annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

5 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 5.1 Where the Pricing Response Template indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in the Pricing Response Template.
- 5.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

6 FIRM PRICE MILESTONE PAYMENTS

- 6.1 Where the Pricing Response Template indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in the Pricing Response Template.
- 6.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

7 VOLUME BASED SERVICE CHARGES

- 7.1 Where the Pricing Response Template indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in the Pricing Response Template.
- 7.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in the Pricing Response Template, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 5 of Part C.
- 7.3 The Charge per unit set out in the Pricing Response Template shall be subject to annual Indexation.

8 SERVICE CHARGES FOR EXTENSION PERIOD

- 8.1 In the event that the Buyer elects to extend the Term beyond the Initial Term, the Service Charges for the Extended Period shall, unless otherwise agreed in accordance with Schedule 8.2 (*Change Control Procedure*) be those charges as set out in the Pricing Response Template for the Extended Period(s) as adjusted in accordance with Paragraph 6 of Part C (*Indexation*).

9 REIMBURSABLE EXPENSES

- 9.1 Where:

9.1.1 Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and

9.1.2 the Buyer so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

9.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request.

9.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance, including in respect of matters such as:

9.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

9.3.2 any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

10 PASS THROUGH ITEMS

10.1 Pass Through Items shall include:

10.1.1 purchases of ad-hoc hardware, Software and other goods and services to the Buyer's specification which are to be used in delivering the Services;

10.1.2 purchases in relation to the subject matter of this Agreement requested by the Buyer, procured on behalf of the Buyer for the benefit of the Buyer, which meet the following criteria:

- (a) are for the Buyer's own use and are not required to enable the Supplier to deliver the Services;
- (b) use the Buyer-provided business specification (and so are provided via the Supplier but at the Buyer's risk, if the purchased goods or services do not work/operate as expected); and
- (c) utilise an existing contract for similar products or services owned by the Supplier subject to the supplier under that contract agrees to such use of the existing contract.

10.2 The Supplier shall charge the Buyer at cost for the Pass Through Items. No element of the Supplier Profit Margin or any other charges may be added to the cost of Pass Through Items.

10.3 The Supplier shall pass on to the Buyer the benefit of any discounts or rebates that it obtained in purchasing the Pass Through Items or through any general marketing or strategic relationship between the Supplier and the relevant provider of goods or services. Where a Subsidiary Undertaking of the Supplier manufactures the Pass Through Items, the Supplier shall pass on to the Buyer the benefit of any discounts or rebates that it obtains from the Subsidiary Undertaking in purchasing the Pass Through Items. Where the Supplier and the Subsidiary Undertaking both manufacture the Pass Through Items, the margin and overhead treatment applied to the Pass Through Items manufactured by the Subsidiary Undertaking shall also apply to the Pass Through Items manufactured by the Supplier.

PART B: CHARGING MECHANISMS

1 MILESTONE PAYMENTS

- 1.1 On the Achievement of a Milestone the Supplier shall be entitled to invoice the Buyer for the Milestone Payment associated with that Milestone, as set out in the Pricing Response Template.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- 1.2.1 a Milestone Achievement Certificate; and
 - 1.2.2 where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.3 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- 1.3.1 upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone; and
 - 1.3.2 no later than sixty (60) Working Days after the invoice referred to in Paragraph 1.3.1 has been issued, the Supplier shall:
 - (a) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (b) issue to the Buyer an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone;
 - (c) where a credit note is to be issued to the Buyer pursuant to Paragraph Schedule 31.3.2(b), repay to the Buyer a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.
- 1.4 Where Milestones are stated in the Pricing Response Template to constitute a group of Milestones (a "**Milestone Group**") and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- 1.4.1 in respect of each Milestone within the Milestone Group, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone, upon the issue of the associated Milestone Achievement Certificate; and
 - 1.4.2 no later than sixty (60) Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (a) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (b) issue to the Buyer an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group;

- (c) where a credit note is to be issued to the Buyer pursuant to Paragraph Schedule 31.4.2(b), repay to the Buyer a sum equal to such difference as a debt within ten (10) Working Days of issue of the credit note; and
- (d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.5 If the Supplier does not repay any such sum as is referred to in Paragraph Schedule 31.3.2(b) or Schedule 31.4.2(b) within ten (10) Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.6 Following the issue of a Certificate of Costs in accordance with Paragraph Schedule 31.2, Schedule 31.3.2(c) or Schedule 31.4.2(c), the Supplier shall not be entitled to invoice the Buyer for any additional Charges relating to the Milestone or Milestone Group (as applicable).

2 SERVICE CHARGES

2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the "*Service Charge Trigger Event*" column of the Pricing Response Template.

2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.

2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:

2.3.1 commences on a day other than the first day of a month; and/or

2.3.2 ends on a day other than the last day of a month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Buyer unless all adjustments (including Service Credits and Compensation Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3 OPTIONAL SERVICES

3.1 If the Buyer gives notice pursuant to Clause 5.5 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

3.1.1 the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to:

(a) the pricing mechanism for those Optional Services set out in the Pricing Response Template; or

(b) where such Optional Services are not expressly priced in the Pricing Response Template, based on the pricing information and methodology used to calculate the Charges pursuant to the Pricing Response Template; and

3.1.2 the Charges for the relevant Optional Services shall, where it relates to the Services, form part of the Service Charges to be calculated in accordance with:

- (a) Paragraph 1.6 of Part B (*Charging Mechanisms*) above; or otherwise
- (b) the pricing mechanism for those Optional Services set out in the Pricing Response Template,

and in all cases as set out in the relevant Change Authorisation Note and/or the Contract Amendment pursuant to Schedule 8.2 (*Change Control Procedure*).

4 COLLABORATION REWARD POT

- 4.1 The Buyer, at its sole discretion shall be entitled to determine the value of the Reward Pot, to be awarded pursuant to the terms of the Collaboration Agreement, each year at its sole discretion and shall use the Universal Standard Charge accordingly.

The Supplier shall be entitled to invoice the Buyer for the amount of the Reward Pot, awarded to it by the Buyer pursuant to the terms of the Collaboration Agreement.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 NOT USED

2 PAYMENTS FOR DELAYS DUE TO BUYER CAUSE

2.1 If the Supplier is entitled in accordance with Clause 34.1.1(c)(iii) (*Buyer Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 27 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

2.1.1 the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:

- (a) can demonstrate it has incurred solely and directly as a result of the Buyer Cause; and
- (b) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 34.1 (*Buyer Cause*),

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

2.1.2 the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Buyer Cause;

2.1.3 where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:

- (a) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

NTP	is the revised Target Price for the relevant Milestone;
TP	is the original Target Price for the relevant Milestone;
AC	is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Buyer Cause; and
x	is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and

- (b) the Guaranteed Maximum Price shall be increased to an amount equal to one hundred and ten percent (110%) of the Target Price as adjusted pursuant to Paragraph Schedule 32.1.3(a);

2.1.4 where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in the Pricing Response Template; and

2.1.5 where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph Schedule 32 results in the Buyer

paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Buyer Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

2.2 The Supplier shall provide the Buyer with any information the Buyer may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

3.2 For each Service Period:

3.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a zero point five percent (0.050%) deduction in the Service Charges; and

3.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC	is the total Service Credits for the relevant Service Period;
TSP	is the total Service Points that have accrued for the relevant Service Period;
X	is 0.050%; and
AC	is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 27.2.1(c)(i) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

3.5 Service Credits shall be shown as a deduction from the amount due from the Buyer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4 COMPENSATION AND GOODWILL PAYMENTS

4.1 Compensation and Goodwill Payments shall be managed centrally by or on behalf of the Buyer, who may appoint a nominated lead including a Relevant Third Party Supplier (the "**Compensation and Goodwill Payments Manager**"), subject always to the Buyer's Compensation and Goodwill Policy.

4.2 The Buyer shall issue a copy of the report, or applicable part of the report, received from the Compensation and Goodwill Payments Manager, to the Supplier as soon as reasonably possible after the last day of the Service Period in question and following agreement of the contents of the report with the Compensation and Goodwill Payments Manager. The report shall detail all relevant (at the discretion of the Buyer) Compensation and Goodwill Payments made in the relevant Service Period (the "**Compensation and Goodwill Payments Report**").

- 4.3 The Compensation and Goodwill Payments Report shall include:
- 4.3.1 the quantum of each Payment made;
 - 4.3.2 subject to confidentiality and Data Protection Obligations, details of the associated complaint; and
 - 4.3.3 the Compensation and Goodwill Payments Manager's determination of responsibility (and therefore liability for the applicable Compensation Credits), based on the information available, for the failure of performance or other primary contributing factor which gave rise to the complaint.
- 4.4 Compensation Credits shall be calculated by reference to that proportion of the amount paid by the Compensation and Goodwill Payments Manager to Customers which is attributable to the Services provided by the Supplier as determined in accordance with Paragraph Schedule 34.3.3 above in any one Service Period.
- 4.5 The Compensation Credits attributable to the Supplier in respect of the previous Service Period shall be shown as a deduction from the amount due from the Buyer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.
- 4.6 If the Supplier wishes to appeal any determination in respect of Compensation Credits from the previous Service Period's Compensation and Goodwill Payments Report, it must in the first instance seek to resolve the matter directly with the Compensation and Goodwill Payments Manager, in accordance with the principles under the Collaboration Agreement. Unless explicitly agreed otherwise in writing by the Buyer, appeals relating to determinations in respect of Compensation Credits shall have no recourse to the Dispute Resolution Procedure, and the appeals process under this Paragraph Schedule 34.6 and Paragraph 4.7 shall be the Supplier's exclusive process for resolving such disputes.
- 4.7 If the Supplier is not satisfied with the outcome of the appeal process in Paragraph 4.6, it may escalate the matter to the Buyer. The Buyer shall have ultimate authority in such circumstances and its determination on the liability for such Compensation Credits (and therefore the responsibility for resolving any underlying cause giving rise to the associated Compensation and Goodwill Payment) shall be final and binding.
- 4.8 The Buyer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control in relation to any Compensation and Good will Payments and which the Buyer deems is relevant to the Compensation Credit being claimed.
- 4.9 The liability of the Supplier in respect of Compensation Credits shall be subject to Clause 27.2 (*Financial and other Limits*).

5 CHANGES TO CHARGES

- 5.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
- 5.1.1 be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
 - 5.1.2 in no event exceed the Maximum Permitted Profit Margin.
- 5.2 The Buyer may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

6 INDEXATION

- 6.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 6 to reflect the effects of inflation.
- 6.2 Where Indexation applies, the relevant adjustment shall be:
- 6.2.1 applied on the 1 April 2025 (when two (2) index uplifts will be applied effective from 1 April 2024 and 1 April 2025) and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
- 6.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published in February for the twelve (12) months ended on the 31 January immediately preceding the relevant adjustment date. The value of the index for February 2023 shall be used as the baseline value of the index.

6.3 The indexed Charge shall be calculated in accordance with the following formula:

$$AD_a = AD_1 \times \frac{\text{Index}_o}{\text{Index}_d}$$

Where:

AD_a = new indexed Charge;

AD₁ = the Charge as stated in this Schedule as at the Effective Date;

“Index_o” = the value of the relevant published index for the February immediately preceding the current Financial Year

“Index_d” = the value of relevant published index for February 2023.

6.4 Except as set out in this Paragraph 6, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

7 ALLOWABLE ASSUMPTIONS

- 7.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 7.2 During each Verification Period, the Buyer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Buyer deems is relevant to the Allowable Assumption being verified.
- 7.3 Within ten (10) Working Days of the end of each Verification Period, the Supplier shall provide the Buyer with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 7.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
- 7.4.1 on the Financial Model greater than the associated trigger for invocation, as set out in the Pricing Response Template; or
- 7.4.2 on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in the Pricing Response Template,

in which case Paragraph 7.5 shall apply.

- 7.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
- 7.5.1 the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;
 - 7.5.2 the Supplier may (subject to Paragraph 7.5.3) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
 - 7.5.3 where the Supplier proposes a Change to the Charges under Paragraph 7.5.2, the Change Request shall reflect the requirements of the Pricing Response Template, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in the Pricing Response Template.

8 RISK REGISTER

The Parties shall review the Risk Register set out in the Pricing Response Template from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

9 MAP FUNDING

- 9.1 The Supplier shall, as a participant in the Hyperscaler's Migration Acceleration Program, apply for investment from the Hyperscaler in relation to funding for migration tools, training, and technical support which could be used to offset some of the Supplier's resources and/or charges for certain Services provided under this Contract. The Supplier makes no representations or assurances that the Services are eligible for this Hyperscaler investment or that any investment may be provided as it is subject to the sole discretion of the Hyperscaler. To the extent any such investment is made by the Hyperscaler and received by the Supplier, the Supplier shall notify the Customer so that the impact on the Services and any reduction to the Charges in this Schedule 7.1 (*Charges and Invoicing*) may be discussed and agreed in writing in accordance with the Change Control Procedure.

10 VOLUME FORECASTING

- 10.1 Following the Operational Service Commencement Date and following the end of each Contract Year thereafter, the Parties shall meet (which meeting may be conducted using remote meeting tools) to discuss the expected future evolution of the quantity (volume) received for each category of Buyer usage of the Services. The relevant categories of Buyer usage and associated baseline volumes shall be agreed by the Parties within forty (40) Working Days of the Effective Date.
- 10.2 During each meeting the Supplier shall present its view of the expected numerical evolution in each category for the Contract Year taking into account actual volumes during the preceding Contract Year and whether forecasted volumes have been exceeded in previous Contract Years, and the Buyer will present any business initiatives or factors that it anticipates may have an impact on the expected volume evolution during the same period. The Supplier will consider and make suitable adjustments to the forecast based on the input of both Parties during the meeting.
- 10.3 No less than five (5) Working Days prior to each meeting the Supplier shall produce a report detailing the forecast and historical actual volumes against each Buyer usage category (as agreed in accordance with Paragraph 10.1 above) for the following Contract Year (the forecast period) and the previous Contract Year (the past history). Such report shall be updated by the Supplier and provided to the Buyer within five (5) Working Days of the meeting taking place.
- 10.4 If, following preparation of the report in accordance with Paragraph 10.3, the Parties see a sustained increase or decrease in the volumes against those set out in the report produced under Paragraph 10.3 in the previous Contract Year, over the preceding Contract Year and previous Contract Years, the Parties will discuss if any adjustments are required. Any adjustments shall be considered in accordance with the Change Control Procedure.

PART D: EXCESSIVE SUPPLIER PROFIT MARGIN

1 LIMIT ON SUPPLIER PROFIT MARGIN IN THE PRICING RESPONSE TEMPLATE

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - 2.1.1 the Supplier shall, within five (5) Working Days of delivery to the Buyer of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - 2.1.2 the Buyer (acting reasonably) may agree or reject the proposed adjustments;
 - 2.1.3 if the Buyer rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within ten (10) Working Days of receiving those reasons; and
 - 2.1.4 if the Parties cannot agree such revised adjustments and the Buyer terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 36.1.1 (*Termination by the Buyer*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Buyer of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

- 1.1 The Buyer shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
- 1.2.1 comply with the requirements of the Buyer's e-invoicing system;
 - 1.2.2 prepare and provide to the Buyer for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Buyer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 1.2.3 make such amendments as may be reasonably required by the Buyer if the template invoice outlined in 1.2.2 is not approved by the Buyer.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Buyer's e-invoicing system, or that it contains the following information:
- 1.3.1 the date of the invoice;
 - 1.3.2 a unique invoice number;
 - 1.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.3.4 the correct reference for this Contract;
 - 1.3.5 the reference number of the purchase order to which it relates (if any);
 - 1.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.3.7 a description of the Services;
 - 1.3.8 the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc.);
 - 1.3.9 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.3.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Buyer under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.3.11 details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
 - 1.3.12 reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);

- 1.3.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- 1.3.14 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- 1.3.15 where the Services have been structured into separate Service lines, the information at 1.3.1 to 1.3.14 of this Paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Buyer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Buyer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Buyer, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Buyer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation through the Buyer's nominated email address as follows:
- accounts.payable@nsandi.com*
- or if that is not possible, posted to:
- Accounts Payable, NS&I, Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT*
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing.
- 1.8 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Buyer's requirements set out in this Part E, the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.9 If the Buyer fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 thirty (30) days after a reasonable time has passed.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Buyer shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 1: PRICING RESPONSE TEMPLATE

See Pricing Responses Template “IBM Digital Experience and Enablement Price Response.xlsx” attached at Attachment 7.1 (*Charges*) of the Order Form.

ANNEX 2: NOT USED

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I [*name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Buyer*] of [*insert name of Supplier*], certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the [*insert name/reference for the Contract*] (the “**Contract**”) in relation to the following [Milestone/Milestone Group]:

[*Insert details of Milestone/Milestone Group*]

- 1 has been reasonably and properly incurred in accordance with [*name of Supplier*]’s books, accounts, other documents and records;
- 2 is accurate and not misleading in all key respects; and
- 3 is in conformity with the Contract and with all generally accepted accounting principles within the United Kingdom.

Signed [*Director of Finance or equivalent*]

[*Name of Supplier*]

SCHEDULE 7.2 - PAYMENTS ON TERMINATION

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Applicable Supplier Personnel means any Supplier Personnel who:

- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel; and
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Buyer or the Replacement Supplier by virtue of the Employment Regulations; and
- (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) forty (40) Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Buyer:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

Breakage Costs Payment means an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;

Compensation Payment means the payment calculated in accordance with Paragraph 6;

Contract Breakage Costs means the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Contract;

Dedicated Supplier Personnel means all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Buyer whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

Profit Already Paid means the Supplier Profit paid or payable to the Supplier under this Contract for the period from the Effective Date up to (and including) the Termination Date;

Redundancy Costs means the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Buyer based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and
- (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Buyer Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;

Request for Estimate means a written request sent by the Buyer to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Buyer exercised its right under Clause 36.1.1 (*Termination by the Buyer*) to terminate this Contract for convenience on a specified Termination Date;

Shortfall Period has the meaning given in Paragraph 6.2;

Termination Estimate has the meaning given in Paragraph 11.2;

Third Party Contract means a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Attachment 4.4 (*Third Party Contracts*) of the Order Form;

Total Costs Incurred means the Costs incurred by the Supplier up to the Termination Date in the performance of this Contract and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

Unrecovered Costs means the Costs incurred by the Supplier in the performance of this Contract (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Contract would have been payable by the Buyer after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

Unrecovered Payment means an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
- (b) the amount specified in Paragraph 4; and

Unrecovered Profit means (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 37.3.1(a) (*Payments by the Buyer*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Contract which:

- 3.1.1 would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- 3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;

- 3.1.3 are incurred under arrangements or agreements that are directly associated with this Contract;
- 3.1.4 are not Contract Breakage Costs relating to contracts or Sub contracts with Affiliates of the Supplier; and
- 3.1.5 relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

- 3.2 The Breakage Costs Payment shall not exceed the lower of:
 - 3.2.1 the relevant limit set out in Annex 1; and
 - 3.2.2 one hundred and twenty percent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Buyer shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Buyer when compared with redundancy, then the Buyer shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 (thirty thousand pounds) per relevant member of the Supplier Personnel.

Contract Breakage Costs

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
 - 3.5.1 are not assigned or novated to a Replacement Supplier at the request of the Buyer in accordance with Schedule 8.5 (*Exit Management*); and
 - 3.5.2 the Supplier can demonstrate:
 - (a) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (b) have been entered into by it in the ordinary course of business.
- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Buyer, the Buyer shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
 - 3.7.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Contract; and/or
 - 3.7.2 Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

- 4.1 The Unrecovered Payment shall not exceed the lowest of:
- 4.1.1 the relevant limit set out in Attachment 7.2 (*Maximum Payments on Termination*) of the Order Form;
 - 4.1.2 one hundred and twenty percent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
 - 4.1.3 the Charges that but for the termination of this Contract would have been payable by the Buyer after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- 5.1.1 the appropriation of Assets, employees and resources for other purposes;
 - 5.1.2 at the Buyer's request, assigning any Third Party Contracts and Sub-contracts to the Buyer or a third party acting on behalf of the Buyer; and
 - 5.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to the Buyer or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Buyer or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6 COMPENSATION PAYMENT

- 6.1 The Compensation Payment payable pursuant to Clause 37.3.1(b) (*Payments by the Buyer*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.
- 6.2 For the purposes of Paragraph 6.1, the "**Shortfall Period**" means:
- 6.2.1 where the Buyer terminates this Contract pursuant to Clause 36.1.1 (*Termination by the Buyer*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1.4 of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of three hundred and sixty-five (365) days; or
 - 6.2.2 where the Supplier terminates this Contract pursuant to Clause 36.2.1 (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Buyer to (and including) the Termination Date falls short of three hundred and sixty-five (365) days,
- but in each case subject to the limit set out in Paragraph 6.3.
- 6.3 The Compensation Payment shall be no greater than the lower of:

- 6.3.1 the relevant limit set out in Attachment 7.2 (*Maximum Payments on Termination*) of the Order Form; and
- 6.3.2 one hundred and twenty percent (120%) of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Buyer pursuant to Clause 36.1.1 (*Termination by the Buyer*) or termination by the Supplier pursuant to Clause 36.2.1 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Buyer to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

9 SET OFF

The Buyer shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Buyer makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Buyer may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.
- 11.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Buyer based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:
 - 11.2.1 be based on the relevant amounts set out in the Financial Model;
 - 11.2.2 include:
 - (a) details of the mechanism by which the Termination Payment is calculated;
 - (b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

(c) such information as the Buyer may reasonably require; and

11.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Buyer to terminate this Contract.

11.4 If the Buyer issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Buyer.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

Attachment 7.2 (*Maximum Payments on Termination*) of the Order Form sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and the Compensation Payment that the Buyer shall be liable to pay to the Supplier pursuant to this Contract.

SCHEDULE 7.3 - BENCHMARKING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Benchmarked Service means a Service that the Buyer elects to include in a Benchmark Review under Paragraph 2.3;

Benchmarker means the independent third party appointed under Paragraph 3.1;

Benchmark Report means the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;

Benchmark Review means a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;

Comparable Service means in relation to a Benchmark Service, a service that is identical or materially similar to the Benchmark Service (including in terms of scope, specification, volume and quality of performance);

Comparison Group means in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;

Equivalent Services Data means in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8.1 and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty six (36) months prior to the date of the appointment of the Benchmarker;

Good Value means in relation to a Benchmark Service, that:

- (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmark Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Service Levels applicable to that Benchmark Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

Upper Quartile means the top twenty five percent (25%) of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

2.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmark Service is, and/or the Benchmark Services as a whole are, Good Value.

2.2 The Buyer shall not be entitled to carry out a Benchmark Review of any Services during the twelve (12) month period from the Operational Service Commencement Date for those Services, nor at

intervals of less than twelve (12) months after any previous Benchmark Review relating to the same Services.

- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Buyer in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Buyer shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Attachment 7.3 (*Approved Benchmarkers*) of the Order Form or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Buyer shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Buyer shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

4 BENCHMARK REVIEW

- 4.1 The Buyer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- 4.1.1 a proposed timetable for the Benchmark Review;
 - 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group;
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - 4.1.8 if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable Where a Party suggests amendments to the draft plan pursuant

to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.

- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 30.1.3 (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
 - 4.8.1 finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - 4.8.2 derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - 4.8.3 derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - 4.8.4 derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - 4.8.5 compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
 - 4.8.6 compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - 4.8.7 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
 - 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Supplier;

- 4.9.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- 4.9.4 the extent of the Supplier's management and contract governance responsibilities;
- 4.9.5 any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 BENCHMARK REPORT

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
 - 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - 5.1.4 illustrate the method used for any normalisation of the Equivalent Services Data.
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Buyer but in any event within no more than three (3) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Buyer shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:

- 5.8.1 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Buyer the difference between the Charges paid by the Buyer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- 5.8.2 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
- (a) the Supplier shall immediately implement the relevant changes;
 - (b) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (c) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.
- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Buyer, constitute a Supplier Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

The approved Benchmarkers are set out in Attachment 7.3 (*Approved Benchmarkers*) of the Order Form.

ANNEX 2: CONFIDENTIALITY CONTRACT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “**Supplier**”); and
- (2) [insert name] of [insert address] (the “**Benchmarker**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [insert name of Buyer] (the “**Buyer**”) and the Supplier are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Buyer of one or more of such services pursuant to the terms of the Contract (the “**Permitted Purpose**”).

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

Confidential Information means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Contract that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) other Information provided by the Supplier pursuant to this Contract to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;
- (c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information that:

- (e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;
- (f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker’s knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;

- (g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or
- (h) was independently developed without access to the Confidential Information;

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

Permitted Purpose has the meaning given to that expression in recital (B) to this Contract.

1.2 In this Contract:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Contract) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- 1.2.6 references to Clauses are to clauses of this Contract.

2 CONFIDENTIALITY OBLIGATIONS

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Contract;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 once the Permitted Purpose has been fulfilled:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible

(other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and

(c) make no further use of any Confidential Information.

3 PERMITTED DISCLOSURES

3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and

3.1.2 have been informed by the Benchmarker of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Contract.

3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Buyer for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Schedule 7.3 (*Benchmarking*) to the Contract.

3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.

3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:

3.4.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.4.2 ask the court or other public body to treat the Confidential Information as confidential.

4 GENERAL

4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:

4.2.1 to grant the Benchmarker any licence or rights other than as may be expressly stated in this Contract;

4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Contract.

4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarkerk acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarkerk of any of the provisions of this Contract. Accordingly, the Benchmarkerk acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarkerk to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.
- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 NOTICES

- 5.1 Any notice to be given under this Contract (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- 5.2.1 if to be given to the Supplier shall be sent to:
- [Address]
- Attention: [Contact name and/or position, e.g. “The Finance Director”]
- 5.2.2 if to be given to the Benchmarkerk shall be sent to:
- [Name of Organisation]
- [Address]
- Attention: []

6 GOVERNING LAW

- 6.1 This Contract shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Contract whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Contract.

IN WITNESS of the above this Contract has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature: _____

Date:

Name:

Position:

For and on behalf of [*name of Benchmark*]

Signature: _____

Date:

Name:

Position:

SCHEDULE 7.4 - FINANCIAL DISTRESS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Applicable Financial Indicators means the financial indicators from Paragraph 1 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form which are to apply to the Monitored Suppliers as set out in Paragraph 2 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form;

Board means the Supplier's board of directors;

Board Confirmation means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;

Credit Rating Level means the failure score, being a rating from zero (0) to one hundred (100) provided by Dun & Bradstreet which predicts the likelihood that a business will, in the next twelve (12) months, seek relief from its creditors or cease business operations without paying creditors in full;

Credit Rating Threshold means the minimum failure score for each entity in the FDE Group as set out in Part C of Attachment 7.4 (*Financial Indicators, Rating Agencies and Credit Ratings*) of the Order Form;

FDE Group means the Supplier, Key Sub-contractors, the Guarantor and the Monitored Suppliers;

Financial Indicators in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 1 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;

Financial Target Thresholds means the target thresholds for each of the Financial Indicators set out at Paragraph 1 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form;

Monitored Suppliers means those entities specified at Paragraph 2 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form; and

Rating Agencies means the rating agencies listed in Part B of Attachment 7.4 (*Financial Distress*) of the Order Form.

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Buyer for the benefit of the Buyer that as at the Effective Date:

2.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part B of Attachment 7.4 (*Financial Distress*) of the Order Form; and

2.1.2 the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within five (5) Working Days of the occurrence of the downgrade).

2.3 The Supplier shall:

2.3.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;

- 2.3.2 monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each in Paragraph 1 of Part A of Attachment 7.4 (*Financial Distress*) of the Order Form (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - 2.3.3 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1.11, and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
- 2.4.1 any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - 2.4.2 a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Part C of Attachment 7.4 (*Financial Distress*) of the Order Form ceases to hold a Credit Rating for that entity.
- 2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3.2 shall:
- 2.5.1 be a single report with separate sections for each of the FDE Group entities;
 - 2.5.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
 - 2.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - 2.5.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
 - 2.5.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

- 3.1 The following shall be Financial Distress Events:
- 3.1.1 the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
 - 3.1.2 an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
 - 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
 - 3.1.4 an FDE Group entity committing a material breach of covenant to its lenders;

- 3.1.5 a Key Sub contractor notifying the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- 3.1.6 any of the following:
- (a) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5,000,000 (five million pounds) or obligations under a service contract with a total contract value greater than £5,000,000 (five million pounds);
 - (b) non-payment by an FDE Group entity of any financial indebtedness;
 - (c) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (d) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
 - (e) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity,
- in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and
- 3.1.7 any one of the Financial Indicators set out at Part A of Attachment 7.4 (*Financial Distress*) of the Order Form for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Buyer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:
- 4.2.1 rectify such late or non-payment; or
 - 4.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
- 4.3.1 at the request of the Buyer, meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
 - 4.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

- (a) submit to the Buyer for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing); and
- (b) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Buyer may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Buyer shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Buyer does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Buyer or referred to the Dispute Resolution Procedure under Paragraph 4.5.

4.5 If the Buyer considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Buyer, the Supplier shall:

4.6.1 on a regular basis (which shall not be less than fortnightly):

- (a) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Buyer, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
- (b) provide a written report to the Buyer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

4.6.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6.1, submit an updated Financial Distress Remediation Plan to the Buyer for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

4.6.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph Schedule 34.3.2(b) is available when required and on request from the Buyer and within reasonable timescales. Such measures may include:

- 4.8.1 obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Buyer and/or entering into confidentiality agreements which permit disclosure;
- 4.8.2 agreeing in advance with the Buyer, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Buyer;
- 4.8.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Buyer (which may include making price sensitive information available to Buyer nominated personnel through confidential arrangements, subject to their consent); and
- 4.8.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

The Financial Indicators are as set out in Attachment 7.4 (*Financial Distress*) of the Order Form.

Monitored Suppliers

The Monitored Suppliers are as set out in Attachment 7.4 (*Financial Distress*) of the Order Form.

6 TERMINATION RIGHTS

- 6.1 The Buyer shall be entitled to terminate this Contract under Clause 36.1.1(b) (*Termination by the Buyer*) if:
 - 6.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.3.3;
 - 6.1.2 the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
 - 6.1.3 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6.3.

7 PRIMACY OF CREDIT RATINGS

- 7.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1.7, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Part C of Attachment 7.4 (*Financial Distress*) of the Order Form, then:
 - 7.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
 - 7.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph Schedule 34.3.2(b).

8 BOARD CONFIRMATION

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation

(whichever is the earlier) provide a Board Confirmation to the Buyer in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

8.1.1 that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or

8.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within fifteen 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Buyer (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

The rating scales for the Rating Agencies selected are as set out in Attachment 7.4 (*Financial Distress*) of the Order Form.

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

The Credit Ratings and Credit Rating Thresholds are as set out in Attachment 7.4 (*Financial Distress*) of the Order Form.

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The calculation methodology for the Financial Indicators is as set out in Attachment 7.4 (*Financial Distress*) of the Order Form.

ANNEX 4: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at Paragraph 8 of Schedule 7.4 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- 1 that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- 2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

On behalf of the Board of Directors:

Chair:

Signed:

Date:

Director:

Signed:

Date:

SCHEDULE 7.5 - FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Annual Contract Report means the annual contract report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;

Audit Agents means:

- (a) the Buyer's internal and external auditors;
- (b) the Buyer's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Buyer to carry out audit or similar review functions;
- (f) an organisation which is a Service Recipient of the B2B Services; and
- (g) successors or assigns of any of the above;

Contract Amendment Report means the contract amendment report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;

Embedded Lease Report means a report against the identification and quantification for capitalisation onto the balance sheet of an asset that is identified as a Right of Use Asset detailing the corresponding liability of any leasing arrangement including for the purposes of IFRS 16;

Final Reconciliation Report means the final reconciliation report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;

Financial Model means the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Buyer in accordance with Paragraph 2 of Part B;

Financial Reports means the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;

Financial Representative means a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

Financial Transparency Objectives has the meaning given in Paragraph 0 of Part A;

IFRS 16 means the International Financial Reporting Standard from the International Accounting Standards Board providing guidance on accounting for leases;

Material Change means a Change which:

- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:

- (i) five percent (5%) or more; or
- (ii) £1,000,000 (one million pounds) or more;

Onerous Contract means a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;

Onerous Contract Report means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

Open Book Data means complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period;

Quarterly Contract Report means a report provided by the Supplier pursuant to Paragraph 3 of Part B to this Schedule; and

Right of Use Asset means an asset leased to the Buyer or an asset of the Supplier which is predominately used for the delivery of the Services or otherwise an asset that is subject to a contract, or part of a contract, that conveys the right to use an asset for a period of time in exchange for consideration and where the user of such assets has the right to obtain substantially all of the economic benefits from the use of the asset.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Buyer in order to achieve, the following objectives:

1.1.1 Understanding the Charges

- (a) for the Buyer to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques; and
- (c) to facilitate the use of the applicable pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*)); and

1.1.2 Agreeing the impact of Change

- (a) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges; and
- (b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services; and

1.1.3 Continuous improvement

- (a) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (b) to enable the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Buyer of the Financial Transparency Objectives and the Buyer's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow the Buyer and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Buyer of the designation and shall prepare and deliver to the Buyer within the timescales agreed by the Parties (an in any event, no later than two (2) months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- 3.1.1 an initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
 - 3.1.2 an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
 - 3.1.3 the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services; and
 - 3.1.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Buyer shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the relevant governance body in accordance with Schedule 8.1, such final form report to be agreed no later than one (1) month following the Buyer's receipt of the draft Onerous Contract Report.
- 3.3 The relevant governance body shall meet within fourteen (14) Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report, and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier, representatives from any Key Sub-contractors/Monitored Suppliers, and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Buyer and the relevant governance body on an information-only basis and the Buyer and relevant governance body's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide:

1.1.1 the Contract Inception Report on or before the Effective Date; and

1.1.2 during the Term the following financial reports to the Buyer, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within one (1) month of a Material Change being agreed between the Supplier and the Buyer
Quarterly Contract Report	Within one (1) month of the end of each Quarter
Annual Contract Report	Within one (1) month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within six (6) months after the end of the Term
Embedded Lease Report	Within one (1) month of a lease being identified as having a capital impact that needs to be quantified

1.2 The Supplier shall provide to the Buyer the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract. The Buyer shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

1.4.1 be completed by the Supplier using reasonable skill and care;

1.4.2 incorporate and use the same defined terms as are used in this Contract;

1.4.3 quote all monetary values in pounds sterling;

1.4.4 quote all Costs as exclusive of any VAT; and

1.4.5 quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Financial Report), acting with express authority, as:

1.5.1 being accurate and not misleading;

1.5.2 having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

1.5.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and

1.5.4 compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;

1.6.2 ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;

1.6.3 the Final Reconciliation Report is a true and fair reflection of the Costs; and

1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Buyer may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

1.8.1 the Costs incurred (or those forecast to be incurred) by the Supplier; and/or

1.8.2 the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Buyer in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

2 FINANCIAL MODEL

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

2.1.1 the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;

2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Buyer; and

2.1.3 the Buyer shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:

(a) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Buyer with such supporting evidence as is required to address the Buyer's concerns within ten (10) Working Days of such notification and the Buyer shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

(b) the Buyer has approved the relevant Financial Report.

2.2 Following approval by the Buyer of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Buyer, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4 KEY SUB CONTRACTORS

4.1 The Supplier shall, if requested by the Buyer, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

4.2.1 be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and

4.2.2 on written request by the Buyer, provide the Buyer or procure that the Buyer is provided with:

(a) full copies of audit reports for the Key Sub-contractors. The Buyer shall be entitled to rely on such audit reports; and

(b) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

1.1 The Buyer, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance (whether by audit or other inspection) of the Supplier and/or its Sub-contractors (including Key Sub-contractors) of the Supplier's obligations under this Contract or for any purpose relating to the delivery of the Services, including for the following purposes:

- 1.1.1 to verify the integrity and content of any Financial Report;
- 1.1.2 to verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and proposed or actual variations to such Charges and payments);
- 1.1.3 to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- 1.1.4 to verify the Certificate of Costs and/or the Open Book Data;
- 1.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law and guidance;
- 1.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 1.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
- 1.1.8 to obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 1.1.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- 1.1.10 to carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- 1.1.11 to enable the National Audit Office to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
- 1.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- 1.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- 1.1.14 to review the Supplier's compliance with its obligations in relation to risk management and internal control activities it undertakes to ensure such compliance;
- 1.1.15 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- 1.1.16 to review the accuracy and completeness of the Registers;

- 1.1.17 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- 1.1.18 to review the Supplier's quality management and quality assurance systems (including all relevant Quality Plans and any quality manuals and procedures);
- 1.1.19 to review the Supplier's internal audit function (including all records of audits carried out in accordance with Paragraph 3);
- 1.1.20 to review the records and data of the progress of projects, including project plans, activity status, time-recording, resource allocation, results of internal reviews of deliverables;
- 1.1.21 to review any records created during the design development, implementation and operation of the Supplier's systems, including pre-operational environments, such as information relating to assurance and Testing;
- 1.1.22 to review the Supplier's compliance with the Standards;
- 1.1.23 to assist in the identification and investigation of fraud;
- 1.1.24 to inspect the Buyer Assets, including the Buyer's IPRs, equipment and facilities, for the purposes of ensuring that the Buyer Assets are secure and that any register of assets is up to date;
- 1.1.25 to review the integrity, confidentiality and security of the Buyer Data;
- 1.1.26 to review the security of the Services, including in relation to the Assets used, the IT Environment or any component of it and to carry out testing, including penetration testing, pursuant to Schedule 2.4 (*Security Management*); and/or
- 1.1.27 to review the Supplier's compliance with its obligations under the Data Protection Legislation and in accordance with Clause 25 (*Protection of Personal Data*) and Schedule 11 (*Processing Personal Data*) or such other legislation or regulation applicable to the Services.

1.2 Except where:

- 1.2.1 an audit is imposed on the Buyer by a regulatory body or another third party (for example a Central Government Body or a Service Recipient);
- 1.2.2 where the terms of this Contract permit or oblige a right of audit; and/or
- 1.2.3 where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract,

the Buyer may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

- 1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

- 2.1 The Buyer shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Buyer deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

- 2.2 Subject to the Buyer's obligations of confidentiality, the Supplier shall on demand provide the Buyer and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- 2.2.1 all information requested by the Buyer within the permitted scope of the audit;
 - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 2.2.3 access to the Supplier System;
 - 2.2.4 access to Supplier Personnel; and
 - 2.2.5 where an On-Site presence is required, a suitable working environment for the Buyer and/or the Audit Agents.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Buyer shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Buyer for all the Buyer's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 The Supplier shall have its own established quality assurance and internal audit functions.
- 3.2 As an alternative to the Buyer's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Buyer may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.3 Following the receipt of a request from the Buyer under Paragraph 3.2 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Buyer has unfettered access to:
- 3.3.1 the resultant audit reports; and
 - 3.3.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- 4.1.1 the Supplier has committed a Default, the Buyer may (without prejudice to any rights and remedies the Buyer may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - 4.1.3 the Buyer has overpaid any Charges, the Supplier shall pay to the Buyer:
 - (a) the amount overpaid;

- (b) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Buyer up to the date of repayment by the Supplier; and
- (c) the reasonable costs incurred by the Buyer in undertaking the audit,

the Buyer may exercise its right to deduct such amount from the Charges if it prefers; and

- 4.1.4 the Buyer has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Buyer.

5 GENERAL AUDIT OBLIGATIONS

- 5.1 The Supplier's assurance and/or internal audit functions shall identify a point of contact to engage with the Buyer's governance regime, including, where required, attendance at committee meetings and reporting on audit-related matters.
- 5.2 The Supplier shall support the Buyer's annual audit programme as applicable and may be required to undertake activities including, but not limited to:
 - 5.2.1 attending meetings to discuss strategic objectives and/or effectiveness of the Risk Management Framework and assurance monitoring;
 - 5.2.2 providing information on key Risk issues and changes to people, systems and processes;
 - 5.2.3 providing quarterly internal audit plans; and
 - 5.2.4 providing monthly updates to the status of prior audit recommendations.

SCHEDULE 7.6 - RISK, REGULATORY COMPLIANCE AND FINANCIAL CRIME

The provisions set out in Attachment 7.6 (*Risk, Regulatory Compliance and Financial Crime*) of the Order Form in relation to Risk, Regulatory Compliance and Financial Crime shall apply to the Supplier in the delivery of the Services.

SCHEDULE 8.1 - GOVERNANCE

1 DEFINITIONS

4.3 In this Schedule, the following definitions shall apply:

Buyer Governance Representative means a Committee Member, Forum Member or representative from the Buyer who is required to attend a Working Group or any other Buyer representative as notified by the Buyer from time to time;

Committee Member means the initial persons appointed by the Buyer to the Committees with voting rights as set out in Annex 1 and any replacements from time to time;

Committees means the Executive Committee, Transformation Committee, Risk Management Committee, Customer and Pricing Committee and Service Delivery Committee and such other Committee as the Buyer may constitute during the currency of the Contract and “**Committee**” shall mean any of them or other Committee as established by the Buyer from time to time;

Customer and Pricing Committee means the body described in Paragraph 10;

Executive Committee means the executive management body described in Paragraph 6;

Forum Member means the persons appointed by the Buyer to the respective Forums with voting rights as set out in Annex 2 and any replacements or additional persons as may be appointed by the Buyer from time to time;

Forums means the forum(s) established by the Buyer to work and report to Committees including, without limitation, the Change Forum, Enterprise Design Authority, Technical Design Authority Forum, Data and Information Forum as set out in Annex 2 and any additions or replacements from time to time;

Risk Register means a central register maintained by the Buyer which records risks to the Buyer in relation to the Services and/or End to End Service;

Risk Management Committee means the body described in Paragraph 9;

Service Delivery Committee means the body described in Paragraph 7;

Supplier Governance Representative means representatives from the Supplier of an appropriate level of seniority, with appropriate level of knowledge and experience (which can be more than one) and/or, where applicable, one or more of its Sub-contractors who have been invited to attend and report to a Committee (as set out in Annex 1 or as notified by the Buyer from time to time) and/or Forum (as set out in Annex 2 or as notified by the Buyer from time to time), as context dictates, in a non-voting capacity following a request from the Buyer and/or to form part of any Working Group;

Transformation Committee means the body described in Paragraph 8; and

Working Groups means any Working Group body established from time to time by the Committees and/or Forums with individual attendees from both the Buyer and the Supplier or Suppliers with a defined remit as may be created in accordance with Paragraph 5 and including from the Effective Date, the Partnership Development Working Group.

2 MANAGEMENT OF THE SERVICES

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

- 2.2 The Supplier shall ensure that its management and governance structure for the delivery of the Services has clear lines of accountability, responsibility and authority and the Supplier shall provide this information on request to the Buyer.
- 2.3 In the event that the Buyer wishes to replace any of its appointed Committee Members or Forum Members it shall be free to do so and shall notify the Supplier after the event. If the Supplier wishes to replace any of its Supplier Governance Representatives, it shall notify the Buyer in writing of the proposed change for agreement of the Buyer (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that, with the exception of the Executive Committee, each Committee Member shall be able to request the attendance of a counterpart Supplier Governance Representative of equivalent seniority and expertise.

3 COMMITTEES ESTABLISHMENT AND STRUCTURE OF THE COMMITTEES

- 3.1 The Committees shall be established by the Executive Committee for the purposes of this Contract on which both the Supplier in a non-voting capacity and the Buyer in a voting capacity shall be represented. The role and remit of each Committee will be set out in its Terms of Reference, which will be subject to amendment from time to time by the Buyer (and, in the case of the Executive Committee, HM Treasury). The Supplier Governance Representatives are only required to attend if invited to do so by a Buyer Governance Representative and shall do so at no additional cost.
- 3.2 In relation to each Committee, the following shall be established, and shall be as set out in Annex 1 or as notified by the Buyer from time to time:
- 3.2.1 Committee Members;
 - 3.2.2 any Supplier Governance Representatives;
 - 3.2.3 frequency that the Committee shall meet (unless otherwise agreed between the Parties);
 - 3.2.4 location of the Committee's meetings; and
 - 3.2.5 planned start date.

Committee meetings

- 3.3 The Buyer shall ensure that its Committee Members and the Supplier shall ensure that its Supplier Governance Representatives shall make all reasonable efforts to attend Committee meetings at which their attendance is required and, solely in relation to each Supplier Governance Representative, when invited. If any Committee Member or Supplier Governance Representative is not able to attend a Committee meeting, that person shall use all reasonable endeavours to ensure that:
- 3.3.1 a delegate attends the relevant Committee meeting in their place who (wherever possible) is properly briefed and prepared; and
 - 3.3.2 that they are debriefed by such delegate after the Committee meeting.
- 3.4 A Committee Member shall be appointed by the Buyer as chairperson for each Committee as identified in Annex 1 (or as notified by the Buyer from time to time). The chairperson shall be responsible for:
- 3.4.1 scheduling Committee meetings;
 - 3.4.2 setting the agenda for Committee meetings and circulating to all attendees in advance of such meeting;
 - 3.4.3 chairing the Committee meetings;
 - 3.4.4 monitoring the progress of any follow-up tasks and activities agreed to be carried out following Committee meetings;

- 3.4.5 ensuring that minutes for Committee meetings are recorded and disseminated electronically to the appropriate persons and to all Committee meeting participants within seven (7) Working Days after the Committee meeting; and
 - 3.4.6 facilitating the process or procedure by which any decision agreed at any Committee meeting is given effect in the appropriate manner.
- 3.5 When invited to attend (which may be on a permanent, semi-permanent or ad hoc basis) the Supplier Governance Representative shall do so and be fully prepared to report on and contribute to the agenda and the objectives of the Committee providing all and any information that may be requested or required by the Committee in a timely manner. Where the Supplier's Sub-contractor has been invited to attend the Supplier shall procure the attendance and representation of such relevant Subcontractor personnel as the Buyer may reasonably require.
- 3.6 The Parties shall ensure, as far as reasonably practicable, that all Committees shall, as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. The Buyer shall endeavour to ensure that Committee Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this. The Supplier shall ensure that Supplier Governance Representatives are well-informed and attend following invitation to enable the relevant Committee Members to make decisions.

4 FORUMS

Establishment and structure of the Forums

- 4.1 The Forums shall be established by a Committee for the purposes of this Contract on which both the Supplier in a non-voting capacity and the Buyer in a voting capacity shall be represented. The Supplier Governance Representatives are only required to attend if invited to do so by a Buyer Governance Representative and shall do so at no additional cost.
- 4.2 In relation to each Forum, the following shall be established as set out in Annex 2 or as notified by the Buyer from time to time:
- 4.2.1 Forum Members;
 - 4.2.2 any Supplier Governance Representatives;
 - 4.2.3 frequency that the Forum shall meet (unless otherwise agreed between the Parties); and
 - 4.2.4 location of the Forum's meetings.

Forum meetings

- 4.3 The Buyer shall ensure that its Forum Members and the Supplier shall ensure that its Supplier Governance Representatives shall make all reasonable efforts to attend Forum meetings at which their attendance is required and, solely in relation to each Supplier Governance Representative, when invited. If any Forum Member or Supplier Governance Representative is not able to attend a Forum meeting, that person shall use all reasonable endeavours to ensure that:
- 4.3.1 a delegate attends the relevant Forum meeting in their place who (wherever possible) is properly briefed and prepared; and
 - 4.3.2 that they are debriefed by such delegate after the Forum meeting.
- 4.4 A Forum Member shall be appointed by the Buyer as chairperson for each Forum as identified in Annex 2 (or as notified by the Buyer from time to time). The chairperson shall be responsible for:
- 4.4.1 ensuring the Forum delivers on its remit as set by the relevant Committee;

- 4.4.2 scheduling Forum meetings;
 - 4.4.3 setting the agenda for Forum meetings and circulating to all attendees in advance of such meeting;
 - 4.4.4 chairing the Forum meetings;
 - 4.4.5 monitoring the progress of any follow up tasks and activities agreed to be carried out following Forum meetings;
 - 4.4.6 ensuring that minutes for Forum meetings are recorded and disseminated electronically to the appropriate persons and to all Forum meeting participants within seven (7) Working Days after the Forum meeting; and
 - 4.4.7 facilitating the process or procedure by which any decision agreed at any Forum meeting is given effect in the appropriate manner.
- 4.5 If any when invited to attend the Supplier Governance Representative shall do so and be fully prepared to report on and contribute to the agenda and the objectives of the Forum providing all and any information that may be requested or required by the Forum in a timely manner.
- 4.6 The Parties shall ensure, as far as reasonably practicable, that all Forums shall, as soon as reasonably practicable, resolve the issues and achieve the objectives placed before them. The Buyer shall endeavour to ensure that Forum Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this. The Supplier shall ensure that Supplier Governance Representatives are well informed and attend when invited to enable the Forum Members to make decisions.

5 WORKING GROUPS

Establishment and structure of the Working Groups

- 5.1 The Working Groups shall be established by the Committees and/or the Forums for the purposes of this Contract on an ad hoc basis to monitor and oversee the completion of allocated tasks which are related to specific aspects of the delivery of the Services and the performance of the Buyer's role including the interface between the Supplier and any Related Third Party Suppliers. Both the Supplier and the Buyer will be represented at Working Groups which are likely to include representatives from Relevant Third Party Suppliers.
- 5.2 Workings Groups will not have decision-making powers but will report to and escalate all issues to the relevant Committee and/or Forum whose remit they fall under. The Supplier Governance Representative shall be obliged to attend and be fully prepared to report on and contribute to the agenda and the objectives of the Working Group providing all and any information that may be requested or required by the Working Group in a timely manner.
- 5.3 At the time of creation of any Working Group, the relevant Committee or Forum will determine the:
- 5.3.1 remit of the Working Group and required task(s) to be undertaken;
 - 5.3.2 Working Group members including required Supplier Governance Representatives;
 - 5.3.3 manner in which it will seek input from the Supplier and what is expected of the Supplier and how it will present the findings to the relevant Committee and/or Forum;
 - 5.3.4 frequency that the Working Group shall meet which shall be no less than every two (2) weeks (unless otherwise agreed between the Parties); and
 - 5.3.5 location of the Working Group's meetings.

In the event that the Supplier wishes to replace any of its appointed Supplier Governance Representatives, it shall notify the Buyer in writing of the proposed change for agreement by the Buyer (such agreement not to be unreasonably withheld or delayed). All Working Group members shall be obliged to attend all meetings.

6 ROLE OF THE EXECUTIVE COMMITTEE

6.1 The Executive Committee shall be responsible for the executive management of the Services and shall:

6.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;

6.1.2 be the point of escalation from all other Committees, Forums and/or and Working Groups; and

6.1.3 carry out the specific obligations attributed to it in Paragraph 6.2.

6.2 The Executive Committee shall:

6.2.1 ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Buyer and the commercial benefit derived by the Supplier;

6.2.2 receive and review reports from all Committees and relevant Forums and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;

6.2.3 determine business strategy and provide guidance on policy matters which may impact on the Implementation of the Services;

6.2.4 provide guidance and authorisation to the Transformation Committee on relevant Changes; and

6.2.5 deal with the prioritisation of resources and the appointment of Committees, Forums and/or Working Groups on behalf of the Parties.

7 ROLE OF THE SERVICE DELIVERY COMMITTEE

7.1 The Service Delivery Committee shall:

7.1.1 be accountable to the Executive Committee for comprehensive oversight for the senior management of the relevant Forums and/or Working Groups under its remit ("**Service Delivery Committee Delegates**");

7.1.2 be responsible for the effective delivery of services and report to the Executive Committee on the status of the partnership of the Supplier and Relevant Third Party Suppliers, informed by the detailed monitoring of expenditure, service management, operational performance, co-ordination of individual projects and integration issues;

7.1.3 receive reports from the relevant Service Delivery Committee Delegates on matters such as issues relating to delivery of existing Services, and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;

7.1.4 to the extent that a significant matter cannot be agreed by the Service Delivery Committee, escalate to the Executive Committee significant issues requiring decision and resolution by the Executive Committee;

- 7.1.5 drive best practice in customer service, IT and operational performance and efficiency, taking into account external trends, benchmarking and research;
- 7.1.6 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- 7.1.7 provide recommendations, seek guidance and authorisation from the Executive Committee as required; and
- 7.1.8 deal with the prioritisation of resources and the creation and appointment of relevant Forums and/or Working Groups within their role remit on behalf of the Parties.

8 ROLE OF THE TRANSFORMATION COMMITTEE

8.1 The Transformation Committee shall:

- 8.1.1 be accountable to the Executive Committee for comprehensive oversight for the senior management of the Change Forum, Technical Design Authority Forum, Data and Information Forum, Enterprise Design Authority any other relevant Forums and/or Working Groups under its remit ("**Transformation Committee Delegates**");
- 8.1.2 receive reports from the Transformation Committee Delegates on matters such as issues relating to change, dependencies across change projects and programmes, financial expenditure, design, technical architecture, new technology, delivery of existing Services and progress against the Implementation Plan;
- 8.1.3 review and report to the Executive Committee on:
 - (a) design (including technical design) requirements related to the Services;
 - (b) to the extent that a significant matter cannot be agreed by the Transformation Committee, significant issues requiring decision and resolution by the Executive Committee, including Changes which will have a significant impact on the Services;
 - (c) progress against the Implementation Plan; and
 - (d) any integration issues and on progress against the Implementation Plan or any Change;
- 8.1.4 provide recommendations, seek guidance and authorisation from the Executive Committee as required;
- 8.1.5 assure the coherence and consistency of the systems architecture for the Supplier Solution;
- 8.1.6 assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Buyer; and
- 8.1.7 subject to appropriate escalation to the Executive Committee in accordance with Paragraph 8.1.3(b), act as and on behalf of the Buyer, as client, pursuant to the Change Control Procedure in relation to any Change (including, without limitation):
 - (a) assess the impact and, if necessary, approve or reject all Change Proposals; and
 - (b) analyse and record the impact of all Changes, specifically whether the Change:

- (i) has an impact on other areas or aspects of this Contract, any Relevant Third Party Suppliers' service agreements with the Buyer and/or documentation relating to the Services;
- (ii) has an impact on the ability of the Buyer to meet its agreed business needs within agreed time-scales;
- (iii) will raise any risks or issues relating to the proposed Change; and
- (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels.

9 ROLE OF THE RISK MANAGEMENT COMMITTEE

9.1 The Risk Management Committee shall identify and manage risks for the Buyer relating to or associated with the performance of the Services.

9.2 The Risk Management Committee shall:

- 9.2.1 be accountable to the Executive Committee for comprehensive oversight for the senior management of the Compliance Working Group, Data Protection Working Group, Information Security Working Group, Assurance Working Group, Cyber Security Working Group, Business Continuity Working Group and any other relevant Forums and/or Working Groups under its remit ("**Risk Management Committee Delegates**");
- 9.2.2 provide independent review over the risks arising from the Buyer's business activity (including activities conducted across its supply chain), and associated risk management to ensure that the Buyer and its suppliers operate within the Buyer's defined risk appetite;
- 9.2.3 receive reports from the relevant Risk Management Committee Delegates on matters such as issues relating to the Risk Register, cyber security, information security, business continuity, compliance and data protection;
- 9.2.4 receive reports from the external and internal auditors with respect to risk issues;
- 9.2.5 make binding decisions concerning matters under its remit;
- 9.2.6 provide assurance to the Executive Committee that risks are being effectively managed across the Services, including (without limitation) reporting the major risks as identified by the Buyer or Relevant Third Party Suppliers to the Executive Committee on a monthly basis;
- 9.2.7 to the extent that a significant matter cannot be agreed by the Risk Management Committee, identify the risks to be reported to the Executive Committee or the Audit & Risk Committee via the regular risk reports;
- 9.2.8 subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- 9.2.9 ratify or refuse requests to close risks on the Risk Register; and
- 9.2.10 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

10 ROLE OF THE CUSTOMER AND PRICING COMMITTEE

10.1 The Customer and Pricing Committee shall:

- 10.1.1 be accountable to the Executive Committee for comprehensive oversight for the senior management of the relevant Forums and/or Working Groups under its remit (“**Customer and Pricing Committee Delegates**”);
- 10.1.2 evaluate, approve and assure the Buyer’s Customer strategy (including Customer experience and satisfaction), ongoing design and development of services and products and use of marketing spend;
- 10.1.3 oversee the delivery of services and products that are predominantly digitally-led;
- 10.1.4 make recommendations on management of targets, approval of forecasts for and delivery of Net Financing/Value Indicators;
- 10.1.5 have oversight and ownership of the pricing model and ensuring regulatory compliance in respect of the Retail Banking Conduct of Business Rules and the FCA Shadow Regime;
- 10.1.6 to the extent that a significant matter cannot be agreed by the Customer and Pricing Committee, escalate to the Executive Committee significant issues requiring decision and resolution by the Executive Committee; and
- 10.1.7 provide recommendations, seek guidance and authorisation from the Executive Committee as required.

11 **CONTRACT MANAGEMENT MECHANISMS**

- 11.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 11.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Contract, processes for:
 - 11.2.1 the identification and management of risks;
 - 11.2.2 the identification and management of issues; and
 - 11.2.3 monitoring and controlling project plans.
- 11.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Committee.

12 **ANNUAL REVIEW**

- 12.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 12.2 The meetings shall be attended by the Client Partner of the Supplier and the Head of Supply Chain and Procurement of the Buyer and any other persons considered by the Buyer necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF COMMITTEES

The Representation and Structure of Committees are as detailed in Annex 1 of Attachment 8.1 (*Representation and Structure of Governance*) of the Order Form.

ANNEX 2: REPRESENTATION AND STRUCTURE OF FORUMS

The Representation and Structure of Forums are as detailed in Annex 1 of Attachment 8.1 (*Representation and Structure of Governance*) of the Order Form.

SCHEDULE 8.2 - CHANGE CONTROL PROCEDURE

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Agile Resource Pool means the Supplier's multi-disciplinary agile resource pool to be utilised to implement, manage and deliver Change from the Operational Service Commencement Date for Milestone 5 as set out in more detail in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*);

Buyer Change Manager means the person appointed to that position by the Buyer from time to time and notified in writing to the Supplier or, if no person is notified, the Buyer Representative;

Change Authorisation Note means the note issued by the Buyer pursuant to Paragraph 11 which shall be substantially in the form of Annex 3;

Change Communication means any Change Proposal, Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;

Change Programme means the strategic change programme proposed by the Buyer and separately the Supplier pursuant to Paragraph 2.6 as to possible Changes that could be considered in the forthcoming year;

Change Proposal means a written request for a Change which shall be substantially in the form of Annex 1;

Change Request means a written request from the Buyer for a Change which shall be substantially in the form of Annex 2 or as may be amended by the Buyer as it determines;

Contract Amendment means the documented variation to the Contract pursuant to Paragraph 12 which shall be substantially in the form of Annex 4;

Definition Phase means the process of a Supplier(s) review of a Change Proposal, working with any Relevant Third Party Supplier (and, if required, the Buyer) to assess and develop the Change Proposal into a detailed statement of requirements and draft Change Request to include an assessment and outline of the potential impact on them (or, if no impact, confirming as such), and an Impact Assessment Estimate, and being the period during which the Supplier shall respond with the details required in accordance with Paragraph 8;

Fast-track Change means any Change which the Buyer decides to expedite in accordance with Paragraph 14;

Impact Assessment means an assessment of a Change Request in accordance with Paragraph 10;

Impact Assessment Estimate has the meaning given in Paragraph 10;

Lead Supplier has the meaning given in Paragraph 5.1.6;

Multi-Supplier Change means a Change identified through the Definition Phase as having an impact on the Supplier and the Relevant Third Party Suppliers;

Receiving Party means the Party which receives a proposed Change;

Single Supplier Change means a Change identified through the Definition Phase as having an impact on one Supplier only (with no impact on the Relevant Third Party Suppliers);

Small Change means a Change pursuant to Paragraph 3.1.2; and

Supplier Change Manager means the person appointed to that position by the Supplier in accordance with Schedule 9.2 (*Key Personnel*) from time to time and notified in writing to the Buyer or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes to the Services and the Contract.
- 2.2 The Parties acknowledge that, due to the nature of the disaggregated service model adopted by the Buyer, Changes proposed in respect of the Related Services (whether by a Relevant Third Party Supplier or the Buyer) may impact on the Supplier and its provision of the Services under this Contract, and vice versa. As such, this Schedule sets out a holistic process for dealing with Change across the End to End Services model and requires an amount of communication and collaboration between the Suppliers and the Buyer, the principles of which are more particularly described in the Collaboration Agreement.
- 2.3 The Supplier shall use appropriate formal project, programme, business analysis and development methodologies that align to Good Industry Practice and shall have regard to the Buyer's project methodologies in managing all aspects of the Change requirements. Where appropriate the Supplier shall incorporate the Buyer's processes into the Supplier procedures to ensure a seamless implementation of Changes. The Supplier shall ensure that all tools, software and systems are compatible with the Buyer's systems. The Supplier shall train all relevant staff in the use of the Buyer's methodologies and shall ensure that the Buyer has full electronic and open access to all the Supplier's activity, documentation, information and data relating the preparation and implementation of Changes and their associated Testing.
- 2.4 The Supplier shall ensure that it regularly reports on the progress of Changes, at such frequency as the Buyer requires. The Supplier shall ensure that these reports include all relevant and sufficiently detailed information in terms of progress to date, activity underway and completed against planned activity, expenditure and costs incurred to date, risks, issues and dependencies, including engagement with Relevant Third Party Suppliers to enable the Buyer to comprehend the status of each Change.
- 2.5 The Supplier shall provide and maintain plans for the development and implementation of Changes. The Supplier shall discuss these plans and associated progress with the Buyer and/or the Relevant Third Party Supplier(s) at regular intervals and at such frequency as the Buyer requires.
- 2.6 The Buyer operates an annual Change Programme planning review cycle, the purpose of which is to outline the planned Changes, scope, priorities and scheduling. The Supplier will be required to provide input to the Change Programme including the provision of data and supporting information as the Buyer may require to make the necessary planning and budgetary decisions on whether to proceed with proposed Changes. The Supplier acknowledges that scope, priorities and scheduling of Changes shall ultimately be set by the Buyer. The Change Programme will be maintained by the Buyer and reviewed quarterly or at such other times as the Buyer considers appropriate. The Buyer reserves the right in its absolute discretion to amend and/or update the Change Programme.

3 TYPE OF CHANGE

- 3.1 In this Contract there are the following types of Changes:

3.1.1 **Operational Change** – which shall mean:

- (a) a Change, being a configuration, solution or functional change which, in the majority of cases which do not require a change to the Charges or terms of this Contract and which can be delivered in an agile, frequent and iterative way; but
- (b) shall not include Incident or Problem resolution or other actions, including responding to Notifiable Defaults, required to remedy shortcomings in Service delivery or otherwise relate to technology refresh which remains an obligation on the Supplier; and

(c) may include Single Supplier or Multi-Supplier Changes.

3.1.2 **Small Changes** – which shall mean:

- (a) proposed Changes to the Services with a lifetime value below the delegated authority level of the Buyer Change Manager which, as at the date of this Contract is £500,000 (five hundred thousand pounds); or
- (b) Changes which would constitute a very small change requiring minimum resource, having minimum or no impact on the Buyer's customers or End to End Services; and
- (c) Changes which do not constitute a Multi-Supplier Change.

3.1.3 **Single Supplier Change** – which shall mean:

- (a) a Change requiring a programme of work to implement the Change which is not otherwise a Consultancy Change; and
- (b) on the face of it clearly only affects the Supplier.

3.1.4 **A Multi-Supplier Change** – which shall mean:

- (a) a Change requiring a programme of work to implement the Change which is not otherwise a Consultancy Change; and
- (b) has the potential to impact on, or require input from the Supplier and Relevant Third Party Suppliers.

For the avoidance of doubt a Change to on-board a Relevant Third Party Supplier will be deemed a Multi-Supplier Change.

3.1.5 **Consultancy Change** – which shall mean:

- (a) a requirement for consultancy service by the Buyer which will not result in a change to the Contract.

3.2 Wherever feasible, it is the intention of the Buyer to use the Operational Change as the default. However, in the absence of agreement by the Parties as to the type of Change, then the Buyer shall, acting reasonably, classify the type of Change which shall be applicable.

3.3 All:

3.3.1 Operational Changes shall be governed in accordance with Paragraph 4 of this Schedule; and

3.3.2 all other categories of Change shall be governed in accordance with Paragraphs 5 to 14.

4 OPERATIONAL CHANGE

4.1 The Buyer shall (at its absolute discretion) determine whether a Change shall be dealt with as an Operational Change, the Parties shall deal with the Change in accordance with this Paragraph 4.

4.2 The Parties agree that all Operational Changes will be delivered and implemented using the Supplier's Agile Resource Pool at no additional cost to the Buyer save as specified in Paragraph 4.4.1.

4.3 In respect of Operational Changes:

4.3.1 The Supplier will:

- (a) maintain the Agile Resource Pool at all times in accordance with its obligations pursuant to Schedule 2.1 (*Service Description*) and Schedule 4.1 (*Supplier Solution*);
- (b) work with the Buyer to agree, as part of the Operations Manual developed pursuant to the Collaboration Agreement, operational ways of working for the Agile Resource Pool including managing the impact or involvement of Relevant Third Party Suppliers but always subject to the terms and conditions of this Contract and its applicable schedules including but not limited to:
 - (i) Schedule 2.1 (*Service Description*);
 - (ii) Schedule 2.2 (*Performance Levels*);
 - (iii) Schedule 4.1 (*Supplier Solution*);
 - (iv) Schedule 6.2 (*Testing Procedures*); and
 - (v) Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

4.3.2 The Buyer will

- (a) own, manage and prioritise the Changes;
- (b) schedule the delivery of the Changes to be delivered using the Agile Resource Pool, where possible by agreeing a schedule of delivery with the Supplier on a rolling three (3) monthly basis taking into account;
 - (i) the views of the Supplier; and
 - (ii) the capacity of the Agile Resource Pool as based on the Service Description,

provided that the scheduling of Operational Changes shall remain at the sole discretion of the Buyer including the right to amend the rolling three (3) month development plan upon reasonable notice.

4.4 Where the capacity of the Agile Resource Pool is:

- 4.4.1 insufficient to deliver the extent of Changes required by the Buyer to be delivered as Operational Changes (as determined by reference to the requirements for the Agile Resource Pool set out in Schedule 2.1 (*Service Requirements*)), the Buyer may issue a Change Request requiring an increase in the size of the Agile Resource Pool, pursuant to the remaining terms of this Schedule save that:
- (a) such a change increasing the size will be deemed to be a Single Supplier Change;
 - (b) the cost of such a change shall be determined by reference to Schedule 7.1 (*Charges and Invoicing*);
 - (c) Paragraph 10 (*Impact Assessment*) will be deemed not applicable save as expressly required by the Buyer; and
 - (d) the provisions of Paragraph 14 (*Fast-Track Changes*) will be deemed to apply unless expressly agreed by the Buyer; and/or
- 4.4.2 below the expected output (as determined by reference to the requirements for the Agile Resource Pool set out in Schedule 2.1 (*Service Requirements*)), the Buyer may require the Agile Resource Pool to undertake other activities (subject to skill sets and experience) as it may reasonably require to resolve the under utilisation.

- 4.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Agile Resource Pool and shall provide a copy to the Buyer on request.
- 4.6 The size, scope and resource of the Agile Resource Pool shall be reviewed:
- 4.6.1 prior to the Operational Services Commencement Date for Milestone 5 and Milestone 7; and
- 4.6.2 following the review under Paragraph 4.6.1 at least two (2) months prior to the Buyer's financial year end in each Contract Year.
- 4.7 The review pursuant to Paragraph 4.6 shall take into account the performance of the Agile Resource Pool, anticipated Changes, the records pursuant to Paragraph 4.5 and utilisation of the Agile Resource Pool in the previous twelve (12) months.
- 4.8 Subject to the output of the review pursuant to Paragraphs 4.6 and 4.7, the parties shall agree any changes to the size, scope and resource making up the Agile Resource Pool. Any change to the Agile Resource Pool shall be dealt with as a Change Request pursuant to the remaining terms of this Schedule save that:
- (a) such a change increasing the size will be deemed to be a Single Supplier Change;
 - (b) the cost of such a change shall be determined by reference to Schedule 7.1 (*Charges and Invoicing*);
 - (c) Paragraph 10 (*Impact Assessment*) will be deemed not applicable save as expressly required by the Buyer; and
 - (d) the provisions of Paragraph 14 (*Fast-Track Changes*) will be deemed to apply unless expressly agreed by the Buyer.

5 PROCESS FOR CHANGE

- 5.1 Unless the Buyer (at its absolute discretion) determines otherwise (in which case Paragraph 15 would apply), the Parties shall deal with Change other than an Operational Change as follows:
- 5.1.1 either Party may request a Change which they shall initiate by issuing a Change Proposal in accordance with Paragraph 7;
- 5.1.2 if requested by the Buyer, the Supplier and, where the change is a Multi-Supplier Change, Relevant Third Party Suppliers (as appropriate) shall undertake a Definition Phase in accordance with Paragraph 8 in order to assess and develop the Change Proposal into a draft Change Request;
- 5.1.3 at the end of the Definition Phase the Supplier(s) will confirm either that:
- (a) the Change Request will have no potential impact on its Services and the Supplier has no requirements or dependencies that should be incorporated or reflected in the development or delivery of the subsequent Change and therefore the Supplier does not need to complete an Impact Assessment; or
 - (b) the proposed Change has a potential impact on that Supplier and/or its Services and it will need to complete an Impact Assessment in response to the Change Request;
- 5.1.4 at the Buyer's discretion, the Buyer may issue the Change Request in accordance with Paragraph 9 following the completion of, or without, a Definition Phase. Such Change Request shall be refined from the draft as the Buyer sees fit, taking into reasonable account the outputs of the Definition Phase, if any;

- 5.1.5 unless otherwise required by the Buyer, the Supplier(s) that have confirmed continued involvement in accordance with Paragraph 5.1.3(b) shall assess and document the potential impact of the proposed Change in accordance with Paragraph 10, and produce an Impact Assessment;
- 5.1.6 where the Change is identified as being a Multi-Supplier Change, the Suppliers and relevant Third Party Suppliers Impact Assessment shall then be collated and coordinated by the Buyer for the Buyer's review. The Buyer reserves the right to appoint a Supplier to be a lead supplier ("**Lead Supplier**") for the purposes of a Multi-Supplier Change;
- 5.1.7 the Buyer shall have the right to request amendments to the Impact Assessment, approve it or reject it in the manner set out in Paragraph 11;
- 5.1.8 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 13;
- 5.1.9 save as otherwise provided in this Schedule, no proposed Change shall be progressed or implemented by the Supplier(s) until a Change Authorisation Note has been issued and signed by the Buyer in accordance with Paragraph 11.2.
- 5.2 To the extent that any Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Change shall specify Milestones and Milestone Date(s) in respect of such Change for the purposes of such procedures.
- 5.3 Until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 11.2, then:
- 5.3.1 unless the Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Change did not apply; and
- 5.3.2 any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 5.4 Subject to Paragraph 11.1, the Buyer shall issue the Change Authorisation Note to the Supplier and any impacted Relevant Third Party Supplier on the same date (redacted as required for the Relevant Third Party Suppliers to maintain Commercially Sensitive Information) which shall include a binding timescale for the Supplier(s) to implement the Change. Unless the Buyer rejects a Change (in accordance with Paragraph 11), the Supplier shall complete the Change within the timescale specified for completion and promptly notify the Buyer of completion.
- 5.5 The Supplier shall:
- 5.5.1 within ten (10) Working Days of the Buyer's signature and issue of a Change Authorisation Note, deliver to the Buyer a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- 5.5.2 thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.
- 6 **COSTS**
- 6.1 Save in respect of Operational Changes pursuant to Paragraph 4 and subject to Paragraph 6.3:
- 6.1.1 the costs of preparing a draft Change Proposal by a Supplier shall be borne by the Supplier:

- 6.1.2 the costs of supporting input in the Definition Phase shall be borne by the respective Parties without recourse to the Buyer;
- 6.1.3 the costs of preparing each Impact Assessment up to the agreed Impact Assessment Estimate shall be borne by the Buyer provided that the Buyer shall not be required to pay any such costs if:
- (a) such costs are below £25,000 (twenty five thousand pounds);
 - (b) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services;
 - (c) such costs arise from a Change arising from a Supplier's Default under Paragraph 6.3; or
 - (d) such costs exceed those in the accepted Impact Assessment Estimate.
- 6.2 The cost of implementing any Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase such Charges only if it can demonstrate in the Impact Assessment that the proposed Change requires additional resources and or activities, in any event, any change to the Charges resulting from a Change (whether the Change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources or activity required for the provision of the Services as amended by the Change.
- 6.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

7 CHANGE PROPOSAL

- 7.1 Either Party may issue a draft Change Proposal to the other Party at any time during the Term. A draft Change Proposal shall be substantially in the form of Annex 1 and state whether the Party issuing the draft Change Proposal considers the proposed Change is likely to impact Relevant Third Party Suppliers, be of a minor nature or such that it may not need to comply with the full requirements of this Schedule 8.2; and/or to be a Fast-track Change.
- 7.2 A draft Change Proposal may include proposals for more than one Change and/or multiple proposals for the same Change, including (without limitation) different delivery options, costing models and other variants.
- 7.3 Upon receipt of a draft Change Proposal from the Supplier, the Buyer will review and consider the draft Change Proposal to determine if it wishes to issue a Change Proposal and proceed. Only the Buyer may issue a Change Proposal. If the Buyer reasonably considers that it requires further information regarding the Change Proposal then the Buyer shall notify the Supplier of this fact and detail the further information it requires.
- 7.4 If further information is required under Paragraph 7.3, the Supplier shall provide the further information requested within five (5) Working Days of receiving the request and the Buyer shall review the revised draft Change Proposal again taking the further information into consideration.
- 7.5 The Buyer reserves the right to identify further requirements in order to progress the Change Proposal. The Buyer may at its sole discretion offer reasonable assistance from either itself or one or more Relevant Third Party Supplier to address such deficiencies and/or identify any further information that it requires.
- 7.6 If the Buyer rejects the Change Proposal, it will notify the Supplier of the rejection together with such reasons as the Buyer at its discretion determines necessary.

8 DEFINITION PHASE

- 8.1 Where the Buyer requests that a Definition Phase is completed in accordance with Paragraph 5.1.2 above, the Buyer will work with the Supplier and, as applicable, any Relevant Third Party Supplier to identify and develop the requirements of the Change including, without limitation:
- 8.1.1 develop the scope of the Change Proposal and undertake the work required to formulate, inform and prepare a draft Change Request;
 - 8.1.2 develop the outcomes, dependencies and deliverables from the Change Proposal for inclusion in the draft Change Request;
 - 8.1.3 identify any possible impacts on the Supplier, Relevant Third Party Suppliers and the Buyer and the Services of the Supplier and the Relevant Third Party Suppliers;
 - 8.1.4 identify a Lead Supplier if so required by the Buyer;
 - 8.1.5 identify an Impact Assessment Estimate for the Supplier (and each Relevant Third Party Suppliers);
 - 8.1.6 calculate the cost implications of the Change Request; and
 - 8.1.7 ensuring such requirements are in compliance with this Service Agreement and the Collaboration Agreement.
- 8.2 If, at the end of the Definition Phase, the Supplier determines that:
- 8.2.1 the proposed Change will not have any impact on its Services or Agreement; and
 - 8.2.2 there are no dependencies on it in relation to the potential delivery of such Change,
- it shall immediately confirm this in writing to the Buyer and shall have no further involvement in respect of that proposed Change.

9 CHANGE REQUEST

- 9.1 The Buyer may at its sole discretion issue a Change Request without requiring a Definition Phase, or Change Proposal. Alternatively, the Buyer may issue the Change Request following the development of a Change Proposal pursuant to Paragraph 7 or following the development of the Change Request through the Definition Phase.
- 9.2 Where the Change Request identifies the Supplier as a Lead Supplier, the Supplier shall act as a Lead Supplier in accordance with the provisions of the Collaboration Agreement subject to any specific limitations identified in the Change Request. For the avoidance of doubt a Lead Supplier shall not be authorised to approve Impact Assessments or Change Authorisation Notes on behalf of the Buyer.
- 9.3 On receipt of a Change Request, where there has been no Definition Phase, the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of issuing the Change Request an estimate of the cost of preparing an Impact Assessment ("**Impact Assessment Estimate**").
- 9.4 If the Buyer requests amendments or justifications from the Supplier in regard to their submitted Impact Assessment Estimate the Supplier shall make such amendments before re-submitting a revised Impact Assessment Estimate and/or provide the Buyer with any additional information requested as soon as reasonably possible and in any event within three (3) Working Days of the request.
- 9.5 The Supplier(s) shall complete an Impact Assessment in accordance with Paragraph 10 and issue the completed Impact Assessment to the Buyer:

- 9.5.1 in relation to a Small Change, within fifteen (15) Working Days;
- 9.5.2 in relation to a Single or Multi-Supplier Change, within thirty (30) Working Days; or
- 9.5.3 such longer period as may be specified by the Buyer,

of receipt of:

- 9.5.4 the Change Request, where a Definition Phase has already been undertaken; or
- 9.5.5 acceptance of the Impact Assessment Estimate, where no Definition Phase has been undertaken.

9.6 If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Buyer and, provided that sufficient information is received by the Buyer to fully understand:

- 9.6.1 the nature of the request for clarification; and
- 9.6.2 the reasonable justification for the request,

the time period to complete the Impact Assessment may, at the reasonable discretion of the Buyer, be extended by the time taken by the Buyer to provide that clarification. The Buyer shall respond to the request for clarification as soon as is reasonably practicable.

10 **IMPACT ASSESSMENT**

10.1 Each Impact Assessment shall be completed by the Supplier in good faith and shall include:

- 10.1.1 details of the proposed Change including the reason for the Change;
- 10.1.2 details of the impact of the proposed Change on the Services, the Service Continuity Plan, any Related Services, the Supplier's ability to meet its obligations under this Contract and the Collaboration Agreement including any Dependencies on the Buyer or Relevant Third Party Suppliers or associated risks;
- 10.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (a) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (b) the format of Buyer Data, as set out in the Services Description;
 - (c) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (d) the Dependencies and Operations Manual under the Collaboration Agreement;
 - (e) other services provided by third party contractors to the Buyer, including any changes required by the proposed Change to the Buyer's IT infrastructure;
- 10.1.4 any necessary input from impacted Sub-contractors;
- 10.1.5 details of the cost of implementing the proposed Change (and, where applicable, cost structures and proposals) calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*);

- 10.1.6 details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 10.1.7 a timetable for the implementation, together with any proposals for the testing of the Change;
 - 10.1.8 details of how the proposed Change will ensure compliance with any applicable Change in Law;
 - 10.1.9 any impact on the details of Schedule 11 (*Processing Personal Data*);
 - 10.1.10 such other information as the Buyer may reasonably request in the Change Request; and
 - 10.1.11 a draft Change Authorisation Note and, if applicable a draft Contract Amendment.
- 10.2 The Supplier shall work together with all Relevant Third Party Suppliers in accordance with the Collaboration Agreement in producing its individual Impact Assessment to ensure that the Impact Assessments of each Supplier(s) are aligned, will jointly deliver the required change, identify all dependencies and do not contain duplication.
- 10.3 Subject to the provisions of Paragraph 10.4, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 11.
- 10.4 If the Buyer reasonably considers that it requires further information regarding the proposed Change so that it may properly evaluate the Impact Assessment provided by the Supplier pursuant to Paragraph 10.1, then it shall notify the Supplier of this fact and detail the further information that it requires.
- 10.5 If the Buyer requests further information under Paragraph 10.4, the Supplier shall undertake the necessary work (including, if necessary, further liaison with the impacted Related Supplier(s)) then re-issue the relevant Impact Assessment to the Buyer within the time period required by the Buyer. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 10.5 until the Buyer is satisfied that it has sufficient information to properly evaluate the Impact Assessment and to satisfy the Buyer's internal authorisation and governance approvals or the Buyer determines not to proceed.
- 10.6 The calculation of costs for the purposes of Paragraph 10.1.6 shall:
- 10.6.1 be based on the Financial Model;
 - 10.6.2 facilitate the Financial Transparency Objectives;
 - 10.6.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 10.6.4 include full disclosure of any assumptions underlying such Impact Assessment;
 - 10.6.5 include evidence of the cost of any assets required for the Change; and
 - 10.6.6 include details of any new Sub-contracts necessary to accomplish the Change.

11 BUYER'S RIGHT OF APPROVAL OR REJECTION

- 11.1 Following receipt by the Buyer of the Impact Assessment from the Supplier the Buyer shall evaluate the Impact Assessment and shall do one of the following:
- 11.1.1 approve the proposed Change, in which case the Parties shall follow the procedure set out in Paragraph 11.2;

- 11.1.2 in its absolute discretion reject the Change, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any proposed Change to the extent that the Change is necessary for the Supplier or the Services to comply with any Changes in Law (but may require modifications pursuant to Paragraph 11.1.3). If the Buyer does reject a Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- 11.1.3 in the event that it reasonably believes that an Impact Assessment contains errors or omissions or in circumstances where it disputes or challenges aspects of the Impact Assessment or if it wishes the Supplier to review and revise aspects of the Impact Assessment, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within ten (10) Working Days of such request or as the Buyer may otherwise request. Subject to Paragraph 10.4, on receiving the modified Impact Assessment, the Buyer shall consider the same pursuant to this Paragraph 11.1.3.
- 11.2 If the Buyer approves the proposed Change pursuant to Paragraph 11.1 then the Buyer shall inform the Supplier. An accepted Impact Assessment shall remain valid for a minimum period of thirty (30) Working Days following approval by the Buyer.
- 11.3 Following acceptance of the Impact Assessment the Buyer may issue a Change Authorisation Note. Following receipt by the Supplier of the Change Authorisation Note, it shall sign both copies and return one copy to the Buyer.
- 11.4 On the later of:
- 11.4.1 signature of the Change Authorisation Note by both parties; or
- 11.4.2 the completion of the last related Change Authorisation Note by the Buyer with a Relevant Third Party Supplier where the Change is a Multi-Supplier Change,
- the Change Authorisation Note shall constitute a legally binding obligation on the Parties in respect of the delivery of the Change identified in that Contract Authorisation Note subject always to the terms and conditions of this Contract as are applicable, save that any amendments required to the Contract as a result of the Change shall not become a binding variation to the Contract until a Contract Amendment has been signed by both parties in accordance with Paragraph 12.
- 11.5 If the Supplier does not sign the Change Authorisation Note within two (2) Working Days of receipt, then the Buyer shall notify the Supplier to request it sign the Change Authorisation Note within a further two (2) Working Days or meet with the Buyer to discuss its concerns. If the Supplier still does not sign the Change Authorisation Note or meet the Buyer to discuss its reasons for not signing the Change Authorisation Note within a further two (2) Working Days of such notification and/or if the Supplier acts on the Change Authorisation Note, then the Supplier shall be deemed to have accepted the relevant Change Authorisation Note.
- 11.6 Subject to Paragraph 13, if the Supplier has not raised these concerns previously in regard to the relevant Change at any point throughout the Change Control Procedure the Parties agree that the Buyer will have absolute discretion whether to incorporate the Supplier's comments or deem the Change Authorisation Note as accepted and signed by the relevant Supplier.

12 AGREEMENT AMENDMENT

- 12.1 In the event that a Change which has been the subject of a Change Authorisation Note requires an amendment to the Contract to take into account the result of such Change, the Change Authorisation Note shall include as an annex, a draft Contract Amendment.
- 12.2 Each draft Contract Amendment shall include as a minimum:
- 12.2.1 the reason for the proposed amendment;

- 12.2.2 the proposed drafting amendments to the terms of this Contract (including amendments to any relevant Schedule);
 - 12.2.3 any changes to Charges as a result of the amendment, including where required a replacement Pricing Response Template;
 - 12.2.4 the date on which the amendment will be effective from.
- 12.3 The parties shall sign the Contract Amendment, in the form attached to the relevant Change Authorisation Note, within two (2) Working Days of completion of the Change or at such other time as the Buyer may require. Upon signature by both Parties, or deemed accepted in accordance with Paragraph 12.4, the Contract Amendment shall constitute a binding variation to this Contract.
- 12.4 If the Supplier does not sign the Contract Amendment as required in Paragraph 12.3, then the Buyer shall notify the Supplier to request it sign the Contract Amendment within a further two (2) Working Days. If the Supplier still does not sign the Contract Amendment within a further two (2) Working Days, then the Supplier shall be deemed to have accepted the relevant Change Authorisation Note.

13 SUPPLIER'S RIGHT OF APPROVAL

- 13.1 Following issue of a Change Proposal, Change Request or an Impact Assessment, if:
- 13.1.1 the Supplier reasonably believes that any proposed Change which is requested by the Buyer would:
 - (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law; and/or
 - 13.1.2 the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Change,

then the Supplier shall be entitled to reject the proposed Change and shall notify the Buyer of its reasons for doing so within the Definition Phase and shall work with the Buyer and any Relevant Third Party Suppliers to revise the requirements to ensure the Change can be delivered.

14 FAST-TRACK CHANGES

- 14.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 14.2 If:
- 14.2.1 the Change is Consultancy Change; or
 - 14.2.2 the total number of Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and
 - 14.2.3 both Parties agree the value of the proposed Change over the remaining Term (including any period for which Termination Services may be required) does not exceed the delegated authority level of the Buyer Change Manager which, as at the date of this Contract is £500,000 (five hundred thousand pounds) and the proposed Change is not significant (as determined by the Buyer acting reasonably); or
 - 14.2.4 the Buyer (acting reasonably) has reason to consider the Change suitable to use the Fast-track Change procedure,

then the Buyer shall confirm to the Supplier in writing that they shall use the process set out in Paragraphs 7, 10, 11 and 12 but with reduced timescales, such that (unless the Buyer has notified the Supplier otherwise) any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of thirty (30) Working Days is reduced to ten (10) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

- 14.3 The Parties may agree in writing to revise the parameters set out in Paragraph 14.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Change notwithstanding that the total number of Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

15 AMENDED CHANGE PROCEDURE

- 15.1 If the Buyer considers that the Change Proposal or Change Request does not warrant the operation of Schedule 8.2 in its entirety (for example, it is a minor change or of limited value or impact) then it may seek to implement the Change using an abbreviated form of this Schedule 8.2. In so deciding the Buyer shall notify the Supplier of the changes to the procedure which may include (without limitation) the reduction of time and/or the reduction in information required in the Impact Assessment and/or absence or one or more of the stages within the Change Control Procedure.

16 ON-BOARDING NEW OR REPLACEMENT SUPPLIERS

- 16.1 In circumstances where the Buyer is to appoint a new or replacement supplier as a Relevant Third Party Supplier or to other aspects of the End to End Services, the Supplier shall provide such Optional Services as a Multi-Supplier Change save that:
- 16.1.1 the costs of such Optional Service will be calculated in accordance with the detail set out in Schedule 7.1 (*Charges and Invoicing*);
 - 16.1.2 the Supplier shall co-operate pursuant to its obligations under the Collaboration Agreement; and
 - 16.1.3 the Impact Assessment will detail any variance (including explanation for the variance) to the dependencies identified by the Supplier and set out in either Schedule 7.1 (*Charges and Invoicing*) or Schedule 4.1 (*Supplier Solution*) in respect of those Optional Services.

17 COMMUNICATIONS

- 17.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Buyer Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 48 (*Notices*) shall apply to a Change Communication as if it were a notice.

18 FUTURE OFFSHORING

- 18.1 As at the Effective Date, the Buyer has no authority to allow for any of the Services to be delivered offshore beyond the United Kingdom. Any such authority would be required from Central Government.
- 18.2 It is not envisaged that any of the Services requiring contact with Customers will ever be allowed to be delivered offshore beyond the United Kingdom.
- 18.3 In circumstances where the Supplier (or the Buyer) considers there may be merit to an element of the Services being provided offshore (Paragraph 18.2) then it may issue a specific Change Proposal pursuant to Paragraph 5.1.
- 18.4 Any Change Proposal issued pursuant to Paragraph 18.3 will ultimately require approval from Central Government but will be entirely at the discretion of the Buyer and must not result in:
- 18.4.1 any change to the risk profile in the Contract;

- 18.4.2 any risk of deterioration in Service delivery or threat to the continuity of Services; and/or
 - 18.4.3 any additional profit to the Supplier beyond that allowed in Part 4 of Schedule 7.1.
- 18.5 The specific requirements and content for any Change Proposal Form under this Paragraph 18 will be determined by the Buyer including any limitations on the scope of any such offshoring but will include requirements to ensure:
- 18.5.1 continuity of Services;
 - 18.5.2 suitable Test Success Criteria;
 - 18.5.3 management of data in accordance with the Contract;
 - 18.5.4 continuation of KPIs and other performance measures and standards;
 - 18.5.5 appropriate testing regime;
 - 18.5.6 ongoing collaboration; and
 - 18.5.7 other specific requirements relating to staffing and other measures are adequately addressed.

NS&I Change Proposal

Template Summary:

AUTHOR(S)	NS&I Enterprise Programme Office
REVIEWER(S)	NS&I Change Management; NS&I Commercial Management
VERSION	[Status]
DATE	25/01/2022

Change Title :

Change Sponsor(s) :

Change Business Owner(s) :

Contributors : Enter names of individuals who have contributed to the document

Date Submitted :

Change Proposal Status : Draft / Approved

Change Proposal Version :

Type of Change proposed (cross applicable) : Choose a Change Type

Areas Impacted (including any third party suppliers) :

Section 1: Current Situation

1.1 Provide an outline of the current 'as is' situation and reasons why it must be changed, e.g. is there a risk/opportunity or threat?

Section 2: Change Objective(s)/Scope

2.1 Provide a description of what you want the change to deliver in terms of Change Objective - for example on completion of this change, NS&I will have maintained / eliminated / decreased / increased / created...

2.2 Provide a description of what you want the change to deliver in terms of Change Scope – what needs to be done to achieve the Change Objective

Section 3: Strategic Alignment and Business Benefits

3.1.1 Business Strategy Choose an Strategy.

3.1.2 Explain how the Change will align with a Business Strategy

3.2 Provide detail of the expected measurable benefits

Section 4: Constraints

Provide detail of any factors that may constrain the delivery of the Change

Section 5: Dependencies

Provide detail of any known Dependencies

Section 6: Assumptions

Provide detail of any known Assumptions

Section 7: Risk

Provide detail of any identified delivery risks for this Change

Section 8: High Level Requirements


Provide a prioritised list (using Must Have, Should Have, Could Have) and description of the high-level requirements necessary to deliver this Change

High Level Requirement Detail	MOSCOW

ANNEX 2: CHANGE REQUEST FORM

Change Request Form

Section 1: Overview			
Name of Change		Date Raised	
CR Number (NS&I EPO to allocate)		Type of Change	
Sponsor		Business Owner	
Sponsor E-mail		Business Owner Email	
Why would you like to make this change?			
What would you like to change?			
Strategic Alignment and Benefits			
Strategy the change is aligned to:			
If not aligned to a strategy please provide justification			
Benefit Description		Select the Strategic Sub-Aim each benefit aligns to:	
		Select strategic sub-aim	
		Select strategic sub-aim	

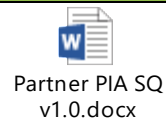
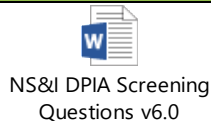
Section 2: Requirements	
2.1 Business Requirements	
All business requirements must be captured in the form of 'user-stories' within the attached Statement of Business Requirements (SBR) template.	 SBR Template v6.3.xlsx
2.2 Target Timelines	
Are there any business drivers (either internal or external) for a particular delivery date? If so, please explain.	

Section 3: Risk and Compliance

3.1 Data Protection

Screening question must be completed for all change requests. The completed form must be submitted to your DPO/DPM and embedded in this change request.

NS&I	Partner	Embed Completed Screening Questions Here
Complete the NS&I Screening questions and submit to DPAssessment@nsandi.com	Complete the Partner screening questions	



A decision must be obtained from your DPO/DPM as to whether a full Data Protection Impact Assessment is required prior to submission of Change Request. Has DPO/DPM indicated that a full Data Protection Impact Assessment is required?

Click here to select a response.

3.2 Risks

Please provide any known risks associated with performing this change

Section 4: Commercial Considerations

4.1 Commercials (either NS&I or Partner)

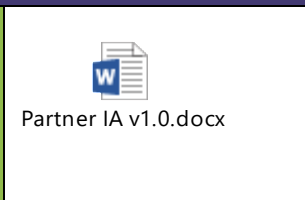
Please obtain Commercial view and state charging mechanism (Time and Materials, Estimated Charge or Fixed Price)

4.2 Acknowledgement by Receiving Party (either NS&I or Partner)

Insert agreement to proceed

Section 5: Impact Assessment Response

Insert **Partner Impact Assessment Response** here:



Section 6: Approval to Proceed with Change	
SIGNED ON BEHALF OF THE BUYER	SIGNED ON BEHALF OF THE PARTNER
Signature: No changes can be made to document after signature	Signature: No changes can be made to document after signature
Name:	Name:
Position:	Position:
Date:	Date:

Note: Once signed, a copy should be stored securely.

ANNEX 3: CHANGE AUTHORISATION NOTE

Change Authorisation Note (CAN)



This form gives the Supplier formal notice to proceed with the changes below.

Please note: This form is binding under the terms of the Contract subject to the provisions of Schedule 8.2.

Change Title:

Ref. No.

Prepared By:

Reviewed By:

Version, Status & Date:

For authorisation, please see Section 4.

Section 1: Change Overview

1.1 Supplier Name / Contract:

1.2 Date CAN issued to Supplier:

1.3 Is Change to Contract Required?

1.4 Target Implementation Date (if applicable):

1.5 Milestone Date (if applicable):

Section 2: Detailed Description of Agreed Change

2.1 Change Requirements and Solution(s)

2.2 Detailed Description of Contract change for which IA was prepared and wording of related changes to Contract

2.3 Implementation

Section 3: Costs

3.1 Proposed Adjustment to the Charges resulting from the Change

3.2 Details of proposed one-off additional charges and means for determining these (e.g. Fixed Price basis)

Section 4: Signatures

SIGNED ON BEHALF OF THE BUYER:

SIGNED ON BEHALF OF THE SUPPLIER:

Signature:

Signature:

No changes can be made to document after signature

No changes can be made to document after signature

Name:

Name:

Position:

Position:

Date:

Date:

ANNEX 4: CONTRACT AMENDMENT

To be determined by the Buyer.

SCHEDULE 8.3 - DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Expert means in relation to a Dispute, a person appointed in accordance with Paragraph 6 to act as an expert in relation to that Dispute;

Expert Determination means determination by an Expert in accordance with Paragraph 6;

Multi-Party Dispute means a Dispute which involves the Parties and one or more Related Third Parties;

Multi-Party Dispute Representatives has the meaning given in Paragraph 8.7;

Multi-Party Dispute Resolution Board has the meaning given in Paragraph 8.7;

Related Third Party means a party to:

- (a) another contract with the Buyer or the Supplier which is relevant to this Contract;
- (b) a Sub-contract; or
- (c) a Relevant Third Party Supplier; and

Supplier Request means a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Party Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 Save in respect of a Dispute in relation to allocation of liability for Compensation Payments pursuant to Paragraph 4 of Part C of Schedule 7.1 (*Charging and Invoicing*) which shall be dealt with in accordance with the provisions of that Schedule, if a Dispute arises either Party may serve on the other Party a notice clearly titled "dispute notice" and including a clear summary of the Dispute ("**Dispute Notice**") together with any relevant supporting documents of which it reasonably believes the other Party does not hold a copy.

2.2 A Party may include in a Dispute Notice one or more Disputes.

2.3 If the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the Dispute Notice must set out the reason(s) why.

2.4 If the Party serving the Dispute Notice believes that the Dispute is a Multi-Party Dispute, the Party must specify the same and, if the Buyer determines that such Dispute is a Multi-Party Dispute, the provisions of Paragraph 8 (*Multi-Party Disputes*) shall apply.

2.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 7 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

3.1 Subject at all times to the discretion of the Buyer, the Parties may agree to use the Expedited Dispute Timetable if they consider it appropriate. If the Parties are unable to reach agreement on whether to

use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Buyer.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

3.2.1 in Paragraph 4.2, ten (10) Working Days; and

3.2.2 in Paragraph 6.3, ten (10) Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Buyer may set a revised deadline. If the Buyer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 **COMMERCIALNEGOTIATION**

4.1 Following deemed service of a Dispute Notice, then, (save where the Buyer has served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute), the Buyer and the Supplier shall attempt in good faith to resolve the Dispute.

4.2 If the Parties have not resolved the Dispute within twenty (20) Working Days of the date on which the Dispute Notice is deemed served, they may within five (5) Working Days following the end of the twenty (20) Working Day negotiation period:

4.2.1 agree an extension of time to continue the negotiations; or

4.2.2 agree that the Dispute(s) set out in the Dispute Notice should be referred to expert determination under Paragraph 6 of this Schedule.

4.3 If the Parties fail to agree one of the options in Paragraph 4.2, the Dispute set out in the Dispute Notice will be automatically referred to adjudication under Paragraph 5 of this Schedule.

4.4 Where an extension of time is agreed under Paragraph 4.2.1, the Parties will continue their attempts in good faith to resolve the Dispute for the duration of that agreed extension period. When that agreed extension period ends and where the Dispute remains unresolved, Paragraphs 4.2 and 4.3 will apply again (except that references to the "twenty (20) Working Days" period shall be read and interpreted to include the agreed extension period).

5 **ADJUDICATION**

5.1 The Party who served the Dispute Notice may refer the Dispute to adjudication in accordance with the version of the Society for Computers & Law Adjudication Rules in force at the time of referral ("**SCLA Rules**").

5.2 Subject to Paragraph 7 (*Urgent Relief*) of this Schedule, no litigation relating to that Dispute may be commenced prior to the publication of the Adjudicator's Decision.

5.3 If either Party wishes to commence litigation after the Decision has been published, it must do so within six (6) calendar months of the Effective Date of the Decision, otherwise the claim will be time-barred.

5.4 If the Society for Computers & Law adjudication scheme is revoked, the Parties are still governed by and shall comply with this Paragraph 5 and (to the extent possible in light of the revocation of the scheme) the SCLA Rules, but paragraph 7 to paragraph 9 of the SCLA Rules Version 2.1 (or equivalent paragraphs of a later version) will be replaced with "*The Parties shall within twenty one (21) days of the Dispute notice agree on and appoint an adjudicator*". In the absence of agreement between

the Parties, either party may request that the Society for Computers and Law (or, if unavailable or unwilling, an equivalent organisation) to nominate an Adjudicator, and such nomination will be binding on the Parties.

5.5 Capitalised terms in this Paragraph 5 which are undefined in the Contract are defined in the SCLA Rules.

6 EXPERT DETERMINATION

6.1 The Parties acknowledge that some Disputes (due to their complexity or the volume of information or evidence that may be required to help resolve the issues) may not be suitable for adjudication under Paragraph 5.

6.2 Subject to the Parties' agreement under Paragraph 4.2.2, the Party who served the Dispute Notice may refer the Dispute to Expert Determination by serving a notice on the other Party, stating that the Dispute is referred to Expert Determination, proposing three (3) conflict-free and available experts, and enclosing a draft expert determination agreement.

6.3 Within twenty eight (28) days of the Party referring the Dispute to Expert Determination, the Parties will agree the identity of the Expert (who need not be one of the experts proposed by the referring Party) and the terms of the expert determination agreement (including the precise questions to be put to the Expert).

6.4 If the Parties are unable to agree on:

6.4.1 the identity of the Expert, the Parties will ask the Society for Computers and Law or, if unavailable, an equivalent body to appoint an Expert; and/or

6.4.2 the terms of the expert determination agreement, the Expert will assist the Parties with agreeing the terms.

6.5 The Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate. The Parties will be bound by these procedures.

6.6 The Expert Determination shall be conducted in line with the following:

6.6.1 the Expert's determination shall (in the absence of manifest error, fraud or material failure to follow the agreed procedures) be final and binding on the Parties;

6.6.2 the Expert may award interest as part of their decision;

6.6.3 the Parties shall decide the procedure in the expert determination agreement, but the Expert shall have the right to order directions, additional processes/procedures;

6.6.4 the Expert shall be requested to make his/her determination within thirty (30) Working Days of their appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

6.6.5 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

6.6.6 the Expert may direct that any legal costs and expenses incurred by a Party in respect of the determination shall be paid by another Party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, a direction on that basis is not appropriate in relation to the whole or part of such costs;

- 6.6.7 the Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct;
- 6.6.8 unless agreed by the Parties and the Expert, the expert determination process will conclude within six (6) months; and
- 6.6.9 all matters concerning the expert determination shall be kept confidential between the Parties and the Expert.

7 URGENT RELIEF

7.1 A Party may at any time:

- 7.1.1 apply to the court for urgent injunctive relief or other interim remedies except where the subject matter of that application is already covered by a Dispute that has been referred to:
 - (a) Adjudication under Paragraph 5; or
 - (b) Expert determination under Paragraph 6 (where the expert determination agreement has been agreed and signed by the Parties and the Expert); and/or
- 7.1.2 commence court proceedings where the Dispute Resolution Procedure may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

8 MULTI-PARTY DISPUTES

- 8.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 (the “**Multi-Party Dispute Resolution Procedure**”).
- 8.2 If at any time following the issue of a Dispute Notice, the Buyer receives a Supplier Request proposing a Multi-Party Dispute and/or the Buyer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Buyer may at its discretion, in the interest of determining the extent of Related Third Party involvement, request a ‘nil impact’ confirmation from those Related Third Parties it identifies in respect of the relevant Dispute.
- 8.3 If at any time following the issue of a Dispute Notice, the Buyer reasonably considers that the matters giving rise to the Dispute do involve one or more Related Third Parties, then the Buyer shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Buyer’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure (such notice a “**Multi-Party Procedure Initiation Notice**”).
- 8.4 If, following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination in accordance with Paragraph 6 or to adjudication in accordance with Paragraph 5, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier must serve a Supplier Request on the Buyer for the Buyer to issue a Multi-Party Procedure Initiation Notice. The Supplier is obliged to serve such Supplier Request promptly, and in any event within five (5) Working Days of any grounds for such Dispute becoming a Multi-Party Dispute having been brought to the Supplier’s attention.
- 8.5 The Buyer shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
 - 8.5.1 a Multi-Party Dispute, in which case the Buyer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or

8.5.2 not a Multi-Party Dispute, in which case the Buyer shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 4 to 7.

8.6 If the Buyer has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

8.7 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

8.7.1 the Buyer;

8.7.2 the Supplier;

8.7.3 each Related Third Party involved in the Multi-Party Dispute; and

8.7.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Buyer considers necessary,

(together “**Multi-Party Dispute Representatives**”).

8.8 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

8.8.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

8.8.2 the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Buyer, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

8.8.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

8.9 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

8.9.1 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

8.9.2 Paragraph 5 (Adjudication) shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

SCHEDULE 8.4 - REPORTS AND RECORDS PROVISIONS

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Buyer for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Part A of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form (once approved, the “**Transparency Reports**”).
- 1.2 If the Buyer rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Buyer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in Part A of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2 OTHER REPORTS

- 2.1 The Buyer may require any or all of the following reports:
 - 2.1.1 delay reports;
 - 2.1.2 reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
 - 2.1.3 reports which the Supplier is required to supply as part of the Management Information;
 - 2.1.4 annual reports on the Insurances;
 - 2.1.5 security reports; and
 - 2.1.6 Force Majeure Event reports.

3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 2 (together “**Records**”):
 - 3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
 - 3.1.2 in chronological order;
 - 3.1.3 in a form that is capable of audit; and
 - 3.1.4 at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Buyer on request, subject to the Buyer giving reasonable notice.

- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Buyer.
- 3.4 The Supplier shall, during the Term and a period of at least seven (7) years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Buyer:
- 3.6.1 as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (6) months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
- 3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4 VIRTUAL LIBRARY

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Buyer, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in accordance with the requirements outlined in this Schedule.
- 4.2 The Supplier shall ensure that the Virtual Library is:
- 4.2.1 capable of holding and allowing access to the information described in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
- 4.2.2 structured so that each document uploaded has a unique identifier which is automatically assigned;
- 4.2.3 readily accessible by the Buyer at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Buyer from time to time;
- 4.2.4 structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
- 4.2.5 structured and maintained in accordance with the security requirements as set out in this Contract including those set out in Schedule 2.4 (*Security Management*);
- 4.2.6 created and based on open standards in Schedule 2.3 (*Standards*); and
- 4.2.7 backed up on a secure off-site system.

- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Buyer pursuant to Clause 17.1 (*Specially Written Software and Project Specific IPRs*) of this Contract.
- 4.4 The Supplier shall upload complete and accurate information specified in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where the Buyer has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Buyer email address at: [REDACTED] or such other address notified to the Supplier by the Buyer from time to time.
- 4.6 Except for notices under Clause 48.4 or items covered by Clause 48.6, where the Supplier is under an obligation to provide information to the Buyer in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Buyer with that information provided that the Buyer has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Buyer access to up-to-date information, Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form) access to view and download the specified information in the Virtual Library in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form subject upon the occurrence of the event specified in the column marked Access Permission in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form) from the Initial Upload Date.
- 4.10 Where Access Permission is specified as being granted to the Buyer's Third Party Auditor (prior to the Buyer being granted access) it shall:
- 4.10.1 be entitled to access, view and download information specified in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10.2 of this Schedule); and
- 4.10.2 report to the Buyer (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual

Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.

- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form.
- 4.14 In the event of a conflict between any requirement in this Contract (excluding Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form) for the Supplier to provide information to the Buyer and the requirements set out in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form, the requirement elsewhere in this Contract shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Buyer relating to the use of the Virtual Library.
- 4.17 On request by the Buyer the Supplier shall provide the Buyer's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: TRANSPARENCY REPORTS

The Transparency Reports required are detailed in Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form.

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

- 1 This Contract, its Schedules and all amendments to such documents.
- 2 All other documents which this Contract expressly requires to be prepared.
- 3 Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
- 4 Notices, reports and other documentation submitted by any Expert.
- 5 All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
- 6 Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
- 7 All formal notices, reports or submissions made by the Supplier to the Buyer Representative in connection with the provision of the Services.
- 8 All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
- 9 Documents prepared by the Supplier in support of claims for the Charges.
- 10 Documents submitted by the Supplier pursuant to the Change Control Procedure.
- 11 Documents submitted by the Supplier pursuant to invocation by it or the Buyer of the Dispute Resolution Procedure.
- 12 Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 13 Invoices and records related to VAT sought to be recovered by the Supplier.
- 14 Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
- 15 Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
- 16 All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
- 17 All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).
- 18 All audit trail data referred to in Schedule 7.5, Part 5 (*Financial Reports and Audit Rights*) regarding compliance risks.
- 19 All audit trail data and metadata relating to the creation, amendment and issue of content and messages.
- 20 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

The Records and Records to be uploaded to the Virtual Library is set in Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form.

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

SCHEDULE 8.5 - EXIT MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

Application Programming Interface or **API** means a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality and/or Buyer Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: <https://www.gov.uk/guidance/gds-api-technical-and-data-standards>;

Emergency Exit means any termination of this Contract which is a:

- (a) termination of the whole or part of this Contract in accordance with Clause 36 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to six (6) months;
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 36 (*Termination Rights*); or
- (c) wrongful termination or repudiation of this Contract by either Party;

Ethical Wall Contract means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;

Exclusive Assets means those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;

Exit Information has the meaning given in Paragraph 3.1;

Exit Manager means the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;

Net Book Value means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Buyer of the same date as this Contract;

Non-Exclusive Assets means those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key-Sub contractor for other purposes of material value;

Ordinary Exit means any termination of the whole or any part of this Contract which occurs:

- (a) pursuant to Clause 36 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or
- (b) as a result of the expiry of the Initial Term or any Extension Period;

Registers means the register and configuration database referred to in Paragraphs 2.1.1 and 2.1.2;

Transferable Assets means those of the Exclusive Assets which are capable of legal transfer to the Buyer;

Transferable Contracts means the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

Transferring Contracts has the meaning given in Paragraph 7.2.1.

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

(a) Assets, detailing their:

(i) make, model and asset number;

(ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(iii) Net Book Value;

(iv) condition and physical location; and

(v) use (including technical specifications); and

(b) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database detailing:

(a) the technical infrastructure, high and low-level designs and operating procedures for each component of the Core Information System through which the Supplier provides the Services; and

(b) high and low-level solution designs for each Change delivered pursuant to Schedule 8.2 (*Change Control Procedure*),

all of which shall contain sufficient detail to permit the Buyer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Buyer as part of the process of agreeing the Exit Plan; and

2.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 3.1.1 details of the Service(s);
 - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 3.1.3 an inventory of Buyer Data in the Supplier's possession or control;
 - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
 - 3.1.7 such other material and information as the Buyer shall reasonably require,
- (together, the “**Exit Information**”).
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Buyer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Buyer may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
- 3.3.1 notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Buyer regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Buyer.
- 3.4 The Supplier may charge the Buyer for its reasonable additional costs to the extent the Buyer requests more than four (4) updates in any six (6) month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 3.5.1 prepare an informed offer for those Services; and
 - 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**
- 4.1 Notwithstanding the provisions of Clause 43 (*Conflict of Interest*) the Buyer may require the Supplier to enter into the Ethical Wall Contract at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

- 4.2 If required to enter into the Ethical Wall Contract, the Supplier will return a signed copy of the Ethical Wall Contract within ten (10) Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Contract will be borne solely by the Supplier.

5 EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Buyer an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Buyer and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
 - 5.1.2 complies with the requirements set out in Paragraph 5.2; and
 - 5.1.3 is otherwise reasonably satisfactory to the Buyer.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
 - 5.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Buyer shall require to enable the Buyer or its sub-contractors to provide the Services;
 - 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
 - 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - 5.3.5 any dependencies or implications of exit on the Relevant Third Party Suppliers;
 - 5.3.6 the management structure to be employed during the Termination Assistance Period;
 - 5.3.7 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - 5.3.8 how the Services will transfer to the Replacement Supplier and/or the Buyer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Buyer's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - 5.3.9 the scope of the Termination Services that may be required for the benefit of the Buyer (including such of the services set out in Annex 1 as are applicable);
 - 5.3.10 a timetable and critical issues for providing the Termination Services;
 - 5.3.11 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;

- 5.3.12 how the Termination Services would be provided (if required) during the Termination Assistance Period, including an indication of arrangements in place to ensure ability to provide any Termination Services in the event of an Insolvency Event in accordance with Paragraph 6.4, with reference to the Insolvency Continuity Plan under Part D of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
 - 5.3.13 procedures to deal with requests made by the Buyer and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
 - 5.3.14 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Buyer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Buyer and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year), within fourteen (14) days of the occurrence of a Financial Distress Event and within three (3) months of the on-boarding of a Relevant Third Party Supplier or as otherwise requested by the Buyer, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Buyer for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or twelve (12) months prior to the expiry of this Contract, the Supplier will submit for the Buyer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Buyer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Buyer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice, or immediately where termination is as the result of an Insolvency Event. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Services are required;
 - 6.1.2 the nature of the Termination Services required; and

- 6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty four (24) months after the date that the Supplier ceases to provide the terminated Services.
- 6.2 For the avoidance of doubt, the Termination Services may include a requirement to continue to deliver the Services, provided that this does not continue longer than twenty four (24) months after the date:
 - 6.2.1 identified in the Termination Notice for termination; or
 - 6.2.2 the Contract was due to expire,as applicable.
- 6.3 The Buyer shall have:
 - 6.3.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
 - 6.3.2 the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.
- 6.4 For the avoidance of doubt, the obligation to provide Termination Services under Paragraph 6.1 in the event of an Insolvency Event shall not relieve the Supplier of the obligation to comply with the provisions of Part D of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

Termination Assistance Period

- 6.5 Throughout the Termination Assistance Period, or such shorter period as the Buyer may require (or where applicable, subject to Paragraph 6.4), the Supplier shall:
 - 6.5.1 continue to provide the Services (as applicable) and, if required by the Buyer pursuant to Paragraph 6.1, provide the Termination Services;
 - 6.5.2 in addition to providing the Services and the Termination Services, provide to the Buyer any reasonable assistance requested by the Buyer to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Buyer and/or its Replacement Supplier;
 - 6.5.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.5.2 without additional costs to the Buyer;
 - 6.5.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties explicitly agree otherwise in accordance with Paragraph 6.7; and
 - 6.5.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer.
- 6.6 Without prejudice to the Supplier's obligations under Paragraph 6.5.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.5.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

- 6.7 If the Supplier demonstrates to the Buyer's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.8 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.9 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- 6.9.1 cease to use the Buyer Data;
 - 6.9.2 provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form (or such other format as reasonably required by the Buyer);
 - 6.9.3 retain the Buyer Data for six (6) months following the Termination Date or Termination Assistance Period, whichever is later, and thereafter as soon as reasonably possible delete from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Buyer Data in accordance with Schedule 2.4 (*Security Management*) or otherwise in accordance with the Buyer's instructions and promptly certify to the Buyer that it has completed such deletion;
 - 6.9.4 return to the Buyer such of the following as is in the Supplier's possession or control:
 - (a) all copies of the Buyer Software and any other software licensed by the Buyer to the Supplier under this Contract;
 - (b) all materials created by the Supplier under this Contract in which the IPRs are owned by the Buyer;
 - (c) any parts of the IT Environment and any other equipment which belongs to the Buyer;
 - (d) all Specially Written Software and Project Specific IPRs; and
 - (e) any items that have been on-charged to the Buyer, such as consumables;
 - 6.9.5 vacate any Buyer Premises unless access is required to continue to deliver the Services;
 - 6.9.6 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination, expiry or termination of this Contract to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph Schedule 36.9.6(b).

- 6.10 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 6.11 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Buyer's prior written consent:
- 7.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 7.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.5.5, the Buyer shall provide written notice to the Supplier setting out:
- 7.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - 7.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and
 - 7.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),
- in order for the Buyer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Buyer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Buyer and/or its Replacement Supplier requires to provide the Services or Replacement Services.
- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- 7.3.1 a Termination Payment is payable by the Buyer to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

- 7.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Buyer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2.2 or otherwise that the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 7.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Buyer) for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 7.5.2 procure a suitable alternative to such assets and the Buyer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Buyer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 7.7 The Buyer shall:
- 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 7.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until such time as the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- 7.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (*Intellectual Property Rights*) and/or Clause 17 (*Transfer and Licences Granted by the Supplier*).

8 SUPPLIER PERSONNEL

- 8.1 The Buyer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier.

- 8.3 During the Termination Assistance Period, the Supplier shall give the Buyer and/or the Replacement Supplier reasonable access to the Supplier Personnel to present the case for transferring their employment to the Buyer and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Buyer or, at the direction of the Buyer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Buyer may require the Supplier to provide the Termination Services), the Buyer shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Buyer requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.3:
- 9.2.1 where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
- 9.2.2 where less than six (6) months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 10.1.1 the amounts shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
- 10.1.2 the Buyer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

10.2 Each Party shall pay (and/or the Buyer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

1 SCOPE OF THE TERMINATION SERVICES

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Buyer may specify:
- 1.1.1 continuing to deliver the Services in accordance with this Contract;
 - 1.1.2 ceasing all non-critical Software changes (except where agreed in writing with the Buyer);
 - 1.1.3 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.4 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.5 delivering to the Buyer the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
 - 1.1.6 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
 - 1.1.7 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - 1.1.8 providing the Buyer with any problem logs which have not previously been provided to the Buyer;
 - 1.1.9 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
 - 1.1.10 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 1.1.11 reviewing all Software libraries used in connection with the Services and providing details of these to the Buyer and/or the Replacement Supplier;
 - 1.1.12 providing assistance and expertise as necessary to support the Buyer and/or the Replacement Supplier develop the migration plan for business operations and Buyer Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Buyer Data;
 - 1.1.13 provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Buyer and/or Replacement Supplier;
 - 1.1.14 making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Buyer (acting reasonably) at the time of termination or expiry;
 - 1.1.15 assisting in establishing naming conventions for any new production site;

- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 generating a computer listing of the Source Code which makes up the Specially Written Software in a form and on media reasonably requested by the Buyer;
- 1.1.18 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.19 delivering copies of the production databases (with content listings) to the Buyer's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Buyer;
- 1.1.20 assisting with the loading, testing and implementation of the production databases;
- 1.1.21 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.22 in respect of the maintenance and support of the Supplier System, providing historical performance data as specified by the Buyer;
- 1.1.23 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Buyer (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.24 providing an information pack listing and describing the Services for use by the Buyer in the procurement of the Replacement Services;
- 1.1.25 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Services;
- 1.1.26 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Buyer Data to the Buyer and/or the Replacement Supplier;
- 1.1.27 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Buyer and/or the Replacement Supplier:
 - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- 1.1.28 knowledge transfer services, including:
 - (a) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

- (b) providing for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (c) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by the Buyer at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.18, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of the Buyer Data migration plan agreed pursuant to Paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.28 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier;
- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule;
- 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- 1.4.6 details of physical and logical security processes and tools which will be available to the Buyer; and
- 1.4.7 any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

(b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

[THE BUYER]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Contract is dated [] 20[]

Between

- (1) **[INSERT NAME OF BUYER]** (the "**Buyer**") [acting on behalf of the Crown] of [insert Buyer's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

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

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

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

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

Contract means this ethical walls agreement duly executed by the Parties;

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

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

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

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

Contract means the [contract for []] dated [] between the Buyer and the Counterparty and/or an Affiliate;

Control means the beneficial ownership of more than fifty percent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and "**Controls**" and "**Controlled**" shall be interpreted accordingly;

Effective Date means the date of this Contract as set out above;

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

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

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

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

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

Parties means the Buyer and the Counterparty;

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

Purpose has the meaning given to it in recital (B) to this Contract;

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

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

1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.

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

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 (one pound) payable by the Buyer to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Buyer under the Contract or pursuant to an open and transparent ITT Process;
 - 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with the Buyer under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
 - 2.1.3 where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.
- 2.2 The Counterparty shall:
 - 2.2.1 Not assign any of the Conflicted Personnel to the Bid Team at any time;
 - 2.2.2 Provide to the Buyer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
 - 2.2.3 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:

- (a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
- (b) which would or could in the opinion of the Buyer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;

- 2.2.4 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.2.5 Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Contract are entered into as necessary between the Buyer and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Buyer;
- 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Contract;
- 2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Contract ensure adherence to the ethical wall arrangements;
- 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.2.10 comply with any other action as the Buyer, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:

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

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

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Buyer to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Buyer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Buyer there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Buyer.
- 2.6 The Buyer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.

- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Buyer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Contract.
- 2.8 The actions of the Buyer pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.
- 2.9 In no event shall the Buyer be liable for any bid costs incurred by:
- 2.9.1 the Counterparty or any Affiliate or Representative; or
- 2.9.2 any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Contract, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
- 2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in Clause 2; and
- 2.10.2 in the event of such breach by the Counterparty of any of its obligations in Clause 2 which cannot be effectively remedied the Buyer shall have the right to terminate this Contract and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

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

4 WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Contract or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Contract is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Contract or affect the validity or enforceability of the provisions of this Contract in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

- 5.1 Subject to Clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 5.2 The Buyer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
- 5.2.1 any Central Government Body; or
- 5.2.2 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 Buyer; and

5.2.3 the Counterparty shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer may reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

7 TRANSPARENCY

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

8 NOTICES

8.1 Any notices sent under this Contract must be in writing.

8.2 The following table sets out the method by which notices may be served under this Contract 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™ 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

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

	Counterparty	Buyer
Contact		
Address		
Email		

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

9 WAIVER AND CUMULATIVE REMEDIES

9.1 The rights and remedies under this Contract 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 Contract 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.

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

10 TERM

Each party's obligations under this Contract shall continue in full force and effect for period of [] years from the Effective Date.

11 GOVERNING LAW AND JURISDICTION

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

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

Signed by the Buyer

Name:

Signature:

Position in Buyer:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

SCHEDULE 8.6 - SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART A: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

BIA Report has the meaning given in Paragraph 2.2;

Business Continuity Plan has the meaning given in Paragraph Schedule 33.2.1(b);

Business Continuity Services has the meaning given in Paragraph 5.2.2;

Business Impact Analysis means the analysis of the risks, threats and vulnerabilities which the Supplier must provide to the Buyer on at least an annual basis and which, when approved by the Buyer, shall inform the Service Continuity Plan;

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

(a) Government Department; or

(b) Non-Ministerial Department;

Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for any period of time or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period including where the unavailability is a result of an Force Majeure Event;

Disaster Recovery Plan has the meaning given in Paragraph Schedule 33.2.1(c);

Disaster Recovery Services means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;

Disaster Recovery System means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;

Insolvency Continuity Plan has the meaning given in Paragraph Schedule 33.2.1(d);

Maximum Tolerable Period of Disruption means the maximum recovery times for all elements of the Services;

Recovery Point Objective means the amount of data (expressed as time) that is lost on the occurrence of a Disaster;

Recovery Time Objectives means the timescales for the Services to be fully recovered, including business functions, systems and processes on the occurrence of a Disaster;

Review Report has the meaning given in Paragraphs 8.2.1 to 8.2.3; and

Service Continuity Plan means the plan prepared pursuant to Paragraph 3 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

2 BUSINESS IMPACT ANALYSIS

- 2.1 Within forty (40) Working Days from the Effective Date and in any event at least twelve (12) weeks prior to the Operational Service Commencement Date the Supplier shall undertake a Business Impact Analysis to identify risks, threats and vulnerabilities that may lead to potential loss of, or disruption to, the Services including:
- 2.1.1 analysis of all activities that support the Services;
 - 2.1.2 analysis of the recovery times for all Services, including business functions, systems and processes;
 - 2.1.3 the identification of business functions, systems and process that support the delivery of specific elements of the Services and their associated risks, threats and vulnerabilities;
 - 2.1.4 assessment of the impact of the loss of different elements of the Services, business functions, systems and processes with available mitigations measures, including the impact over time of loss or disruption, in order to comply with the Maximum Tolerable Period of Disruption of one (1) hour;
 - 2.1.5 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 2.1.6 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - 2.1.7 identification of risks arising from the interaction of the Services with the services provided by a Relevant Third Party Supplier;
 - 2.1.8 identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member;
 - 2.1.9 scenarios which could cause degradation and the implications for differing Service elements;
 - 2.1.10 consequences of differing geographical location of operations, cost benefit analysis and dependencies;
 - 2.1.11 consequences of inability to access data;
 - 2.1.12 possible mitigation measures;
 - 2.1.13 the Service Continuity Plan testing and exercises programme planned for the upcoming year (incorporating testing for the individual elements of the Plan, including Disaster Recovery); and
 - 2.1.14 timeframes and order of priority for the full recovery of the Services and the associated Maximum Tolerable Period of Disruption (to be no longer than one (1) hour), including staged recovery.
- 2.2 The Supplier shall complete the Business Impact Analysis and submit a report setting out its findings (the "**BIA Report**") for the Buyer's approval no later than twelve (12) weeks prior to the Operational Service Commencement Date.
- 2.3 Following receipt of the BIA Report from the Supplier, the Buyer shall review and comment on the BIA Report as soon as reasonably practicable and notify the Supplier in writing that it approves or rejects the BIA Report no later than twenty (20) Working Days after the date on which it is first submitted to the Buyer. If the Buyer rejects the BIA Report, it shall inform the Supplier in writing of the reasons for its rejection and the Supplier shall then revise the BIA Report (taking reasonable account of the Buyer's comments) and shall re-submit a revised BIA Report to the Buyer for the Buyer's approval within twenty (20) Working Days of the date of the Buyer's notice of rejection. The provisions of this Paragraph 2.3

shall apply again to any resubmitted BIA Report, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 2.4 The Supplier shall undertake a Business Impact Analysis annually, on each anniversary of the Operational Service Commencement Date, or additionally as may be determined by the Buyer, acting reasonably, and, following the implementation of any material Changes to the Services.
- 2.5 Each subsequent Business Impact Analysis shall be completed within four (4) weeks of its commencement and a BIA Report confirming all findings shall be submitted to the Buyer within six (6) weeks of commencement of the Business Impact Analysis.

3 SERVICE CONTINUITY PLAN

3.1 Within ten (10) Working Days from the completion of the Business Impact Assessment and the Buyer's approval of the BIA Report and in any event at least six (6) weeks prior to the Operational Service Commencement Date, the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan, incorporating all elements of the Business Impact Analysis, which shall detail the processes, policies (notwithstanding the obligation to comply with Schedule 2.3 (*Standards*)) and arrangements that the Supplier shall follow to:

- 3.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- 3.1.2 the recovery of the Services in the event of a Disaster; and
- 3.1.3 the Buyer's requirements for the production, maintenance, testing and invocation of the Supplier's service continuity strategy and plans.

3.2 The Service Continuity Plan shall:

3.2.1 be divided into four parts:

- (a) Part A which shall set out general principles applicable to the Service Continuity Plan;
- (b) Part B which shall relate to business continuity (the "**Business Continuity Plan**");
- (c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**");
- (d) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the "**Insolvency Continuity Plan**"); and

3.2.2 unless otherwise required by the Buyer in writing, be based upon and be consistent with the provisions of Paragraphs 4, 5, 6 and 7.

3.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Buyer shall:

3.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

3.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than twenty (20) Working Days after the date on which the draft Service Continuity Plan is first delivered to the Buyer.

3.4 If the Buyer rejects the draft Service Continuity Plan:

- 3.4.1 the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- 3.4.2 the Buyer shall then revise the draft Service Continuity Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Service Continuity Plan to the Buyer for the Buyer's approval within twenty (20) Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 3.3 and this Paragraph 3.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

4 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

4.1 Part A of the Service Continuity Plan shall:

- 4.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the Service Continuity Plan link to each other;
- 4.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Buyer by a Relevant Third Party Supplier;
- 4.1.3 contain an obligation upon the Supplier to liaise with the Buyer and (at the Buyer's request) any Relevant Third Party Supplier with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable and for the Supplier to provide support in the event of a Relevant Third Party Supplier invoking their own service continuity plans, to ensure the ongoing availability of the End to End Service;
- 4.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Buyer and any of its other Relevant Third Party Suppliers in each case as notified to the Supplier by the Buyer from time to time;
- 4.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Buyer;
- 4.1.6 contain a copy of the then current, Buyer-approved Business Impact Analysis pursuant to Paragraph 2 above;
- 4.1.7 provide for documentation of processes, including business processes, and procedures;
- 4.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Buyer;
- 4.1.9 identify the procedures for reverting to “normal service”;
- 4.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity, including validating that backups are free from malicious software;
- 4.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- 4.1.12 provide for the provision of technical advice and assistance to key contacts at the Buyer as notified by the Buyer from time to time to inform decisions in support of the Buyer's business continuity plans.

4.2 The Service Continuity Plan shall be designed so as to ensure that:

- 4.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - 4.2.2 the adverse impact of any Disaster, Service failure, an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member, or disruption on the operations of the Buyer, is minimal as far as reasonably possible;
 - 4.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force;
 - 4.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan;
 - 4.2.5 the Service Continuity Plan is fully integrated with relevant Sub-contractors' disaster recovery and business continuity plans; and
 - 4.2.6 align with any supporting operational incident management procedures and documentation and include cross-references to such documentation.
- 4.3 The Supplier shall ensure that the Service Continuity Plans are up to date and cover all aspects of the Services whether undertaken in the United Kingdom or from an alternative location. The Supplier shall ensure that the Service Continuity Plans are updated to take account of any Changes including any resulting from each Business Impact Analysis in accordance with Paragraph 2.
- 4.4 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure and to ensure that any Changes to the Services (including to organisational functions, processes and systems) will not weaken the Service Continuity Plan management arrangements, unless the Buyer provides express prior written consent, having been given full knowledge and an associated written impact assessment from the Supplier.
- 4.5 The Service Continuity Plan shall be available for review by the Buyer immediately upon the Buyer's request.
- 4.6 Unless otherwise agreed by the Buyer, all communications issued during the occurrence of a Disaster or other event requiring invocation of the Service Continuity Plan shall be agreed with the Buyer prior to issue.
- 4.7 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.
- 4.8 The Supplier shall give assurance to the Buyer on how it meets and complies with the requirements set out in the Financial Conduct Authority's (FCA) guidance on operational resilience. The Supplier shall report to the Buyer on such compliance, in any event not less than every Quarter and shall take the guidance into consideration when producing a new Business Impact Analysis under Paragraph 2.4 or reviewing the Service Continuity Plan under Paragraph 8.

5 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

- 5.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Buyer expressly states otherwise in writing:
- 5.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

5.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

5.2 The Business Continuity Plan shall:

5.2.1 address the various possible levels of failures of or disruptions to the Services;

5.2.2 set out the Services to be provided, the timescales for each element of the Services to be fully recovered and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);

5.2.3 set out the measures to ensure that the Recovery Time Objective is zero;

5.2.4 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan;

5.2.5 align with the Buyer’s business continuity strategy, including its business continuity policy and ISO22301 (Business Continuity Management); and

5.2.6 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

6 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

6.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

6.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

6.3 In the event of a Disaster, the Supplier shall track and report daily on the activities undertaken to recover the Services to full Service resilience in accordance with Paragraph 6.4.7.

6.4 The Disaster Recovery Plan shall include the following:

6.4.1 the technical design and build specification of the Disaster Recovery System;

6.4.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(a) data centre and disaster recovery site audits;

(b) backup methodology and details of the Supplier's approach to data back-up and data verification, to enable compliance with the Maximum Tolerable Period of Disruption and Recovery Point Objectives without any degradation to the provision of the live Services;

(c) identification of all potential disaster scenarios;

(d) risk analysis;

(e) documentation of processes and procedures;

- (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 6.4.3 a clear list of those Services (if any) which the Supplier will relocate/recover on the occurrence of a Disaster, the proposed recovery location/strategy and timescales for relocation. The Supplier shall not relocate Services to any location unless the Buyer has approved such location in advance;
- 6.4.4 mapping of resources, people, technology and facilities required to deliver the Services within the Maximum Tolerable Period of Disruption of one (1) hour and applicable succession plans in the event of the loss of staff critical to delivery of the Services and cyber resilience;
- 6.4.5 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services, for the avoidance of doubt, the Supplier shall ensure a Recovery Point Objective of zero and shall guarantee transactions that are currently being processed by the Service;
- 6.4.6 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 6.4.7 details of how the Supplier will ensure a return to full Service resilience in the same state or better state as prior to the incident (including in terms of capacity and infrastructure) within a maximum of five (5) calendar days of the Disaster Recovery Plan being invoked together with a priority order of services to be restored;
- 6.4.8 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 6.4.9 testing and management arrangements, including failover and recovery testing where required in addition to the obligations under Paragraph 9 (*Testing of the Service Continuity Plan*) below.

7 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 7.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Buyer supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 7.2 The Insolvency Continuity Plan shall include the following:
- 7.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

- 7.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
- 7.2.3 plans to manage and mitigate identified risks;
- 7.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- 7.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- 7.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

8 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

- 8.1 Notwithstanding and pursuant to the obligation under Paragraph 2.4, the Supplier shall review and update the Service Continuity Plan (incorporating the latest Business Impact Analysis and the risk analysis on which it is based):
 - 8.1.1 on a regular basis and as a minimum once every six (6) months;
 - 8.1.2 following the implementation of a Change;
 - 8.1.3 within three (3) calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 10;
 - 8.1.4 within fourteen (14) days of a Financial Distress Event;
 - 8.1.5 within thirty (30) days of a Corporate Change Event; and
 - 8.1.6 where the Buyer requests any additional reviews (over and above those provided for in Paragraphs 8.1.1 to 8.1.5) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 8.2 Each review of the Service Continuity Plan pursuant to Paragraph 8.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Buyer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Buyer a report (a "**Review Report**") setting out:
 - 8.2.1 the findings of the review;
 - 8.2.2 any changes in the risk profile associated with the Services; and

8.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

8.3 Following receipt of the Review Report and the Supplier's Proposals, the Buyer shall:

8.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

8.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Buyer.

8.4 If the Buyer rejects the Review Report and/or the Supplier's Proposals:

8.4.1 the Buyer shall inform the Supplier in writing of its reasons for its rejection; and

8.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Buyer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Buyer for the Buyer's approval within twenty (20) Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 8.3 and this Paragraph 8.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

8.5 The Supplier shall as soon as is reasonably practicable after receiving the Buyer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

9 TESTING OF THE SERVICE CONTINUITY PLAN

9.1 The Supplier shall test the Service Continuity Plan including the Disaster Recovery Plan on a regular basis and in accordance with the then-current, agreed Business Impact Analysis (and in any event not less than twice in every Contract Year). Subject to Paragraph 9.2, the Buyer may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Buyer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan. The Supplier shall also test the Disaster Recovery Plan prior to the Operational Service Commencement Date or 'go live' of the Services and/or any Optional Services, and where required following a Change.

9.2 If the Buyer requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

9.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer in this regard. Each test shall be carried out under the supervision of the Buyer or its nominee.

9.4 The Supplier shall ensure that any use by it or any Sub-contractor of 'live' data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.

- 9.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
- 9.5.1 the outcome of the test;
 - 9.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test;
 - 9.5.3 lessons learned and a root cause analysis; and
 - 9.5.4 the Supplier's proposals for remedying any such failures, including a timetable for implementation.
- 9.6 Following each test, the Supplier shall take all measures requested by the Buyer (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Buyer, by the date reasonably required by the Buyer and set out in such notice.
- 9.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract and the Supplier shall ensure that any testing or review shall not have any impact on the live environment.
- 9.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Buyer.
- 9.9 Where the test identifies any gaps in the resilience and availability needs of the Services, the Supplier shall update the Service Continuity Plan accordingly and submit to the Buyer for review.
- 9.10 Where required by the Buyer, the Supplier shall participate in and support Disaster Recovery test exercises coordinated by the Buyer as part of the deployment of other service providers, including Relevant Third Party Suppliers.

10 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 10.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the Business Continuity Plan and Disaster Recovery Plan provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Buyer promptly of such invocation and in any event within one (1) hour of such event. In all other instances the Supplier shall invoke the Business Continuity Plan and Disaster Recovery Plan elements only with the prior consent of the Buyer.
- 10.2 The Insolvency Continuity Plan element of the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- 10.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - 10.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

11 TRAINING AND AWARENESS

- 11.1 The Supplier shall provide a formal training, awareness and educational learning programme on the Service Continuity Plan appropriate to individuals' roles in Service Continuity Plan arrangements, for all Supplier Personnel and at the Buyer's request for the Buyer's personnel. This programme shall include refresher training following each Business Impact Analysis or any material change to the Service Continuity Plan.

PART B: CORPORATE RESOLUTION PLANNING

1 SERVICE STATUS AND SUPPLIER STATUS

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

2 PROVISION OF CORPORATE RESOLUTION PLANNING INFORMATION

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
 - 2.2.1 where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within sixty (60) days of the Effective Date; and
 - 2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within sixty (60) days of the date of the Relevant Buyer's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
 - 2.3.1 is full, comprehensive, accurate and up to date;
 - 2.3.2 is split into two parts:
 - (a) Group Structure Information and Resolution Commentary; and
 - (b) UK Public Sector / CNI Contract Information,and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
 - 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Authorities to understand and consider the information for approval;
 - 2.3.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
 - 2.3.5 complies with the requirements set out at Annex 1 (*Group Structure Information and Resolution Commentary*) and Annex 2 (*UK Public Sector / CNI Contract Information*) respectively.
- 2.4 Following receipt by the Relevant Buyer or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Buyer shall procure that the Relevant Buyer or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later

than sixty (60) days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that the Relevant Buyer or Relevant Authorities approve the CRP Information or that the Relevant Buyer or Relevant Authorities reject the CRP Information.

- 2.5 If the Relevant Buyer or Relevant Authorities reject the CRP Information:
- 2.5.1 the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Authorities for approval within thirty (30) days of the date of the Relevant Buyer's or Relevant Authorities' rejection. The provisions of Paragraphs 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
- 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed since it was issued and no more than eighteen (18) months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - 2.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.
- 2.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Buyer or Relevant Authorities:
- 2.8.1 within fourteen (14) days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Distress*);
 - 2.8.2 within thirty (30) days of a Corporate Change Event unless not required pursuant to Paragraph 2.10;
 - 2.8.3 within thirty (30) days of the date that:
 - (a) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
 - (b) none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and

- 2.8.4 in any event, within six (6) months after each Accounting Reference Date or within fifteen (15) months of the date of the previous Assurance received from the Relevant Buyer (whichever is the earlier), unless:
- (a) updated CRP Information has been provided under any of Paragraphs 2.8.1, 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than twelve (12) months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or
 - (b) unless not required pursuant to Paragraph 2.10.

2.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Buyer or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Relevant Buyer or Relevant Authorities.

2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- 2.10.1 Aa3 or better from Moody's;
- 2.10.2 AA- or better from Standard and Poors; or
- 2.10.3 AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Buyer or Relevant Authorities to the extent required under Paragraph 2.8.

3 TERMINATION RIGHTS

3.1 The Buyer shall be entitled to terminate this Contract under Clause 36.1 (*Termination by the Buyer*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:

- 3.1.1 the Supplier fails to provide the CRP Information within four (4) months of the Effective Date if this is a Critical Service Contract or otherwise within four (4) months of the Relevant Buyer's or Relevant Authorities' request; or
- 3.1.2 the Supplier fails to obtain an Assurance from the Relevant Buyer or Relevant Authorities within four (4) months of the date that it was first required to provide the CRP Information under this Contract.

4 CONFIDENTIALITY AND USAGE OF CRP INFORMATION

4.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

- 4.2 Where the Relevant Buyer is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Buyer under Paragraph 4.1 of this Part B and Clause 23 (*Confidentiality*).
- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Buyer or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality; and/or
 - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (a) summarising the information;
 - (b) grouping the information;
 - (c) anonymising the information; and
 - (d) presenting the information in general terms.
- 4.5 The Supplier shall provide the Relevant Buyer or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 1: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY

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

ANNEX 2: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION

- 1 The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1.1 of this Annex 2 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI; and
 - 1.2 provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5,000,000 (five million pounds) per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

SCHEDULE 8.7 - CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public’s perception of the Beneficiary (a “**Sensitive Claim**”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary’s prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier

shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

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

SCHEDULE 9.1 - STAFF TRANSFER

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Former Supplier means a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

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

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;

Notified Sub-contractor means a Sub-contractor identified in Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

Old Fair Deal means HM Treasury Guidance "*Staff Transfers from Central Government: A Fair Deal for Staff Pensions*" issued in June 1999 including the supplementary guidance "*Fair Deal for Staff pensions: Procurement of Bulk Transfer Contracts and Related Issues*" issued in June 2004;

Replacement Sub-contractor means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

Relevant Transfer means a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;

Service Transfer means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

Service Transfer Date means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

Staffing Information in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex 2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex 2 from time to time.

Statutory Schemes means the CSPS as defined in the Annex to Part D of this Schedule;

Supplier's Final Supplier Personnel List means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

Supplier's Provisional Supplier Personnel List means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the

provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

Transferring Buyer Employees means those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;

Transferring Former Supplier Employees in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

Transferring Supplier Employees means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING BUYER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Buyer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and

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

1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 BUYER INDEMNITIES

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

2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Buyer Employees; and/or

(b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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

(a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(b) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date;

- 2.1.5 a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Buyer; and
 - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Buyer within six (6) months of the Effective Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Buyer nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- 3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Contract which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary

apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.2.2 Old Fair Deal; and/or

5.2.3 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:

6.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

6.1.2 Part D (and its Annexes) to this Staff Transfer Schedule.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

- 1.1 The Buyer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to

financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Buyer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Buyer and, where required by the Buyer, to the Former Supplier; and

2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Buyer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Buyer and, if applicable, the Former Supplier, within six (6) months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations

in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Contract which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.1.2 Old Fair Deal; and/or

5.1.3 the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

7.1.2 Part D (and its Annexes) to this Staff Transfer Schedule.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Buyer and, where required by the Buyer, give notice to the Former Supplier; and
- 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or
- 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Buyer shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Buyer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the

fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Buyer and, if applicable, Former Supplier within six (6) months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

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

PART D: PENSIONS

1 DEFINITIONS

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

Actuary means a Fellow of the Institute and Faculty of Actuaries;

Admission Contract means either or both of the CSPS Admission Contract (as defined in Annex D1: CSPS);

Best Value Direction means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);

Broadly Comparable means:

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,

and "**Broad Comparability**" shall be construed accordingly;

CSPS means the schemes as defined in Annex D1 to this Part D;

Direction Letter/Determination has the meaning in Annex D2 to this Part D;

Fair Deal Eligible Employees means the CSPS Eligible Employees, (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);

Fair Deal Employees means any of:

- (a) Transferring Buyer Employees;
- (b) Transferring Former Supplier Employees;
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraph 2.5 of Part A or Paragraph 2.5 of Part B or Paragraph 1.4 of Part C;
- (d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor); and/or
- (e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Buyer; and

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

2 PARTICIPATION

- 2.1 In respect of all or any Fair Deal Employees, Annex D1: CSPA shall apply.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Contract and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Contract and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3 PROVISION OF INFORMATION

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

4 INDEMNITIES

- 4.1 The Supplier shall indemnify and keep indemnified the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Contract;
 - 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract,

including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;

- 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
 - (b) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
- 4.1.4 arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

4.2.1 shall survive termination of this Contract; and

4.2.2 shall not be affected by the caps on liability contained in Clause 27 (*Limitations on Liability*).

5 DISPUTES

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

5.1.1 who will act as an expert and not as an arbitrator;

5.1.2 whose decision will be final and binding on the Buyer and/or the Supplier; and

5.1.3 whose expenses shall be borne equally by the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

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

6 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 47 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

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

- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty eight (28) days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:
 - 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
 - 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
 - 8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

9 PENSION ISSUES ON EXPIRY OR TERMINATION

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or CSPS and/or the relevant Administering Buyer and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10 BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE

- 10.1 Where the Supplier is unable to participate in the relevant Statutory Scheme in respect of the Fair Deal Eligible Employees (for any reason whatsoever), the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
 - 10.2.1 established by the Relevant Transfer Date;
 - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);

- 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- 10.3.1 supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:
- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3.3 but using the last day of the Fair

Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and

- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

11 BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

- 11.1 If the terms of Paragraphs 2.2 of Annex D1: CSPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
 - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
 - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- 11.3.1 supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as

applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

12 RIGHT OF SET-OFF

12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Contract in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee, and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

ANNEX D1: CSPA

1 DEFINITIONS

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

CSPA means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements, and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

CSPA Admission Contract means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;

CSPA Eligible Employee means any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Contract; and

CSPA Fair Deal Employee means a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal.

2 FUTURE SERVICE BENEFITS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Contract to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- 2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPA Admission Contract in accordance with Paragraph 2.1 but the CSPA Admission Contract is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Buyer, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 11 of Part D.

PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub contractor shall provide, to the Buyer any information the Buyer may reasonably require relating to the manner in which the Services are organised, which shall include:

1.6.1 the numbers of employees engaged in providing the Services;

1.6.2 the percentage of time spent by each employee engaged in providing the Services;

1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 9 (*Staff Transfer*) (as appropriate); and

1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier

Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance

contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;

2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

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

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

2.5.1 the Buyer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Buyer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved,

the Buyer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall

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

- 2.13 Subject to Paragraph 2.14, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
 - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement

Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS

The list of notified Sub-Contractors are set out in Attachment 9.1 (*List of Notified Sub-Contractors*) of the Order Form.

ANNEX 2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

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

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

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

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

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

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

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

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

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

SCHEDULE 9.2 - KEY PERSONNEL

The Key Personnel are identified in Attachment 9.2 (*Key Personnel*) of the Order Form.

SCHEDULE 10 - GUARANTEE

IBM International Group B.V.

- and -

The Director of Savings

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the "**Deed**")

BETWEEN:

- (1) **IBM INTERNATIONAL GROUP B.V** a company incorporated under the laws of Netherlands, registered in Netherlands, whose principal office is at Johan Huizingalaan 765, Amsterdam NL-NH NL 1066 VH (the "**Guarantor**"); and
- (2) **THE DIRECTOR OF SAVINGS** as agent of the Crown (the "**Buyer**").

together the "**Parties**" and each a "**Party**".

BACKGROUND:

- (A) The Buyer has awarded a contract dated [insert date] to IBM United Kingdom Limited (the "**Supplier**") for the provision of the 'Digital Experience and Digital Enablement' package of the Buyer's Rainbow programme (the "**Guaranteed Agreement**").
- (B) It is a condition of the Buyer entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Buyer of a parent company guarantee substantially in the form of this Deed.
- (C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following definitions apply in this Deed:

Business Day means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Control means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or
- (b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;

Guaranteed Agreement has the meaning given to it in Recital (A);

Guaranteed Obligations has the meaning given to it in Clause 2.1.1;

Supplier has the meaning given to it in Recital (A); and

VAT means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- 1.2.1 the "Guarantor", the "Buyer", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- 1.2.2 "assets" includes present and future properties, revenues and rights of every description;
- 1.2.3 this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.4 "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 1.2.6 the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- 1.2.7 a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- 2.1.1 guarantees to the Buyer the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the "**Guaranteed Obligations**");
- 2.1.2 shall pay to the Buyer from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Buyer under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- 2.1.3 shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Buyer, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Buyer in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Buyer arising out of, or in connection with:

- 2.2.1 any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
- 2.2.2 any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

provided that the Guarantor's liability under Clause 2.1 and this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 AUTHORITY PROTECTIONS

Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until (i) the Guaranteed Obligations have been satisfied or performed in full; or (ii) the date on which the Guarantor no longer

beneficially owns, directly or indirectly, a majority of the voting power and voting stock of the Supplier, provided, however, that if there is a change in control that results in the Guarantor no longer beneficially owning, directly or indirectly, a majority of the voting power and voting stock of the Supplier, then the Guarantor shall procure a replacement guarantee (the "Replacement Guarantee") in form and substance similar to this Guarantee, and from the entity, which has substantially the same or better financial standing as the Guarantor, that has acquired beneficial ownership, directly or indirectly, of a majority of the voting power and voting stock of the Supplier (in which case this Guarantee shall terminate as of the effective date of the Replacement Guarantee); and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Buyer may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
- 3.2.1 any arrangement made between the Supplier and the Buyer;
 - 3.2.2 any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
 - 3.2.3 any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
 - 3.2.4 any waiver or forbearance by the Buyer whether as to payment, time, performance or otherwise;
 - 3.2.5 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
 - 3.2.6 any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
 - 3.2.7 any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 Without prejudice to Clause 2.1 of this Deed, the Guarantor waives any right it may have to require the Buyer to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
- 3.4.1 be subrogated to any right or security of the Buyer;
 - 3.4.2 claim or prove in competition with the Buyer against the Supplier or any other person;
 - 3.4.3 demand or accept repayment in whole or in part of any indebtedness due from the Supplier;

3.4.4 take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or

3.4.5 claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Buyer (and in such case only in accordance with any written instructions of the Buyer).

3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Buyer given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Buyer applied towards the discharge of the Guarantor's obligations to the Buyer under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Buyer in pounds sterling:

5.1.1 without any set-off, condition or counterclaim whatsoever; and

5.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.

5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

5.2.1 the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and

5.2.2 the Guarantor shall promptly deliver to the Buyer all receipts issued to it evidencing each deduction or withholding which it has made.

5.3 The Guarantor shall not and may not direct the application by the Buyer of any sums received by the Buyer from the Guarantor under any of the terms in this Deed.

5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5.5 The Guarantor shall, on a full indemnity basis, pay to the Buyer on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Buyer incurs in connection with:

5.5.1 the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and

5.5.2 any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

6.1 Any release, discharge or settlement between the Guarantor and the Buyer in relation to this Deed shall be conditional on no right, security, disposition or payment to the Buyer by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any

enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Buyer shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

7.1 The Guarantor represents and warrants to the Buyer that:

- 7.1.1 it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.1.2 it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- 7.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- 7.1.4 it has been duly authorised to enter into this Deed;
- 7.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- 7.1.6 this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 7.1.7 all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- 7.1.8 that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- 7.1.9 that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Buyer shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Buyer.

9 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Buyer on the Guarantor under this Deed shall be in writing, addressed to:

10.1.1 For the Attention of IBM International Group B.V;

10.1.2 Johan Huizingalaan 765; 1066 VH Amsterdam, The Netherlands,

or such other address in England and Wales as the Guarantor has from time to time notified to the Buyer in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.

10.2 Any notice or demand served on the Guarantor or the Buyer under this Deed shall be deemed to have been served:

10.2.1 if delivered by hand, at the time of delivery; or

10.2.2 if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

10.3 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

10.4 Any notice purported to be served on the Buyer under this Deed shall only be valid when received in writing by the Buyer.

11 ENTIRE AGREEMENT

11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Buyer (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

12.1 No failure or delay by the Buyer to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other 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 such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.2 Any waiver by the Buyer of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Deed 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.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Buyer that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Buyer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

Executed as a deed by **IBM International Group B.V**
 acting by [insert name of Director] a director,
 in the presence of a witness:

)
)
)

.....
 [Signature of Director]

.....
 Name of Director:

Signature of Witness:

Name of witness:

Address of witness:

.....

.....

Occupation of witness:

SCHEDULE 11 - PROCESSING PERSONAL DATA

JOINT CONTROLLER AGREEMENT

The following template terms shall apply in the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, pursuant to Clause 25.3.

1 JOINT CONTROLLER STATUS AND ALLOCATION OF RESPONSIBILITIES

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Joint Controller Agreement in replacement of Clause 25.2.1 to 25.2.15 (Where one Party is Controller and the other Party is Processor) and 25.4.1 to 25.4.11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [Supplier/Buyer]:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2 UNDERTAKINGS OF BOTH PARTIES

- 2.1 The Supplier and the Buyer each undertake that they shall:
- 2.1.1 report to the other Party every [x] months on:
 - (a) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;

- (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,
- that it has received in relation to the subject matter of the Agreement during that period;
- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs Schedule 112.1.1(a) to (e); and
 - 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs Schedule 112.1.1(c) to (e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
 - 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Contract or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Joint Controller Agreement;
 - 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
 - 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
 - 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (a) are aware of and comply with their duties under this Joint Controller Agreement and those in respect of Confidential Information;
 - (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
 - (c) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
 - 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

3 DATA PROTECTION BREACH

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

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

3.1.2 all reasonable assistance, including:

(a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

(b) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

(c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

(d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

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

3.2.1 the nature of the Personal Data Breach;

3.2.2 the nature of Personal Data affected;

3.2.3 the categories and number of Data Subjects concerned;

3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;

3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and

3.2.6 describe the likely consequences of the Personal Data Breach.

4 AUDIT

4.1 The Supplier shall permit:

4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Joint Controller Agreement and the Data Protection Legislation; and/or

4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

5 IMPACT ASSESSMENTS

5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures); and

5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 GDPR.

6 ICO GUIDANCE

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

7 LIABILITIES FOR DATA PROTECTION BREACH

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

7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;

7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident; or

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

- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“**Court**”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim Losses**”):
- 7.3.1 if the Buyer is responsible for the relevant breach, then the Buyer shall be responsible for the Claim Losses;
 - 7.3.2 if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and
 - 7.3.3 if responsibility is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in Paragraphs 7.2 to 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Buyer.

8 TERMINATION

If the Supplier is in material Default under any of its obligations under this Joint Control Agreement, the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 36 (*Termination Rights*).

9 SUB-PROCESSING

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

10 DATA RETENTION

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

SCHEDULE 12 – COLLABORATION AGREEMENT

The Collaboration Agreement is set out in Attachment 12 (*Collaboration Agreement*) of the Order Form.