



**DWP CONTRACT**

**For**

**The Provision of DNA Parentage Testing Services**

**Between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS  
(the "Authority") acting as part of the Crown.**

**and**

**Orchid Cellmark Limited  
04045527**

**CONTRACT REFERENCE NUMBER: Project\_11900**

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## Award Form

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

<b>1. Buyer</b>	The Department for Work and Pensions (the Buyer). Its offices are on: Caxton House, Tothill Street, London, SW1H 9NA
<b>2. Supplier</b>	<div> <div>Name:</div> <div>Orchid Cellmark Ltd</div> </div> <div> <div>Address:</div> <div>16 Blacklands Way</div> <div>Abingdon</div> <div>Oxon</div> <div>OX14 1DY</div> </div> <div> <div>Registration number:</div> <div>4045527</div> </div>
<b>3. Contract</b>	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables, being DNA Parentage Testing - see Schedule 2 (Specification) for full details.</p> <p>This opportunity is advertised in this Contract Notice in Find A Tender, reference Project_25693</p>
<b>4. Contract reference</b>	Project_25693
<b>5. Buyer Cause</b>	Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Buyer is liable to the Supplier.
<b>6. Collaborative Working Principles</b>	The Collaborative Working Principles do not apply to this Contract
<b>7. Financial Transparency Objectives</b>	<p>The Financial Transparency Objectives do not apply to this Contract.</p> <p>See Clause 6.3 for further details.</p>
<b>8. Start Date</b>	1 May 2024
<b>9. Expiry Date</b>	30 April 2029
<b>10. Extension Period</b>	<p>The contract may be extended by 12 months, then by a further 12 months.</p> <p>Up to 30 April 2031.</p>

		Extension exercised where the Buyer gives the Supplier no less than <b>6 months</b> written notice before this Contract expires.
<b>11. Ending this Contract without a reason</b>		<p>The Buyer shall be able to terminate this Contract in accordance with Clause 14.3.</p> <p>Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be <b>90 days</b>.</p>
<b>12. Incorporated Terms</b> (together these documents form the " <b>this Contract</b> ")		<p>The following documents are incorporated into this Contract. Where numbers are missing we are not using these Schedules. If there is any conflict, the following order of precedence applies:</p> <p>This Award Form</p> <ul style="list-style-type: none"> <li>(a) Any Special Terms (see <b>Section 14 (Special Terms)</b> in this Award Form)</li> <li>(b) Core Terms</li> <li>(c) Schedule 1 (Definitions)</li> <li>(d) Schedule 6 (Transparency Reports)</li> <li>(e) Schedule 20 (Processing Data)</li> <li>(f) The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> <li>(i) Schedule 2 (Specification)</li> <li>(ii) Schedule 3 (Charges)</li> <li>(iii) Schedule 4 (Tender)</li> <li>(iv) Schedule 5 (Commercially Sensitive Information)</li> <li>(v) Schedule 8 (Implementation Plan &amp; Testing)</li> <li>(vi) Schedule 10 (Service Levels)</li> <li>(vii) Schedule 14 (Business Continuity and Disaster Recovery)</li> <li>(viii) Schedule 16 (Security)</li> <li>(ix) Schedule 21 (Variation Form)</li> <li>(x) Schedule 20 (Processing Data)</li> <li>(xi) Schedule 22 (Insurance Requirements)</li> <li>(xii) Schedule 26 (Sustainability)</li> <li>(xiii) Schedule 25 (Rectification Plan)</li> <li>(xiv) Schedule 30 (Exit Management)</li> <li>(xv) Schedule 38 (Disputes)</li> </ul> </li> <li>(g) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.</li> </ul>

<b>13. Special Terms</b>	NOT USED
<b>14. Buyer's Environmental Policy</b>	<a href="https://www.gov.uk/government/publications/sustainability-in-ukhsa/environmental-policy">https://www.gov.uk/government/publications/sustainability-in-ukhsa/environmental-policy</a>
<b>15. Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under this Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value reports to be agreed post implementation.
<b>16. Buyer's Security Requirements and Security and ICT Policy</b>	<p>For the purposes of Schedule 16 (Security) the Supplier is required to comply with the Security Policy.</p> <p>For the purposes of Supplier Staff vetting, the Supplier is required to comply with the Security Policy.</p> <p>For the purposes of Schedule 16 (Security) the Supplier is not required to comply with the ICT Policy.</p>
<b>17. Charges</b>	<p>Indexation is not applicable as detailed in Schedule 3 (Charges)</p> <p>The Buyer shall pay undisputed sums under this Contract in accordance with Clause 4. The Buyer shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.</p>
<b>18. Estimated Year 1 Charges</b>	██████████
<b>19. Reimbursable expenses</b>	Recoverable as set out in Schedule 3 (Charges)
<b>20. Payment method</b>	Via monthly invoice to the Buyer
<b>21. Service Levels</b>	<p>Service Credits will accrue in accordance with Schedule 10 (Service Levels)</p> <p>The Service Credit Cap is set out in schedule 3 (Charges)</p> <p>The Service Period is 1 Month</p>
<b>22. Liability</b>	<p>In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than ██████████.</p> <p>In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being ██████████.</p> <p>This liability cap applies to the Supplier's liability to the Buyer under the contract only – it does not act as a cap on any data protection liability that a Supplier may incur to any third party (e.g. Supplier being fined by the Information Commissioner). But</p>

		if a Supplier default leads to the Buyer breaching data protection legislation, the amount which a Buyer will be able to recover from the Supplier will be subject to this liability cap.	
23.	<b>Staff Vetting Procedures</b>	The staff vetting procedures as described in the Security Standards and Policies set out in Annexes A and B of Schedule 5 (Security).	
24.	<b>Progress Meetings and Progress Reports</b>	<p>The Supplier shall attend Progress Meetings with the Buyer every month</p> <p>The Supplier shall provide the Buyer with Progress Reports every month</p>	
25.	<b>Guarantor</b>	NOT USED	
26.	<b>Virtual Library</b>	NOT USED	
27.	<b>Supplier's Contract Manager</b>	Name	██████████
		Job Title	██████████
		Email	████████████████████
		Phone	██████████
28.	<b>Supplier Authorised Representative</b>	Name	██████████
		Job Title	████████████████████
		Email	██████████████████
		Phone	██████████
29.	<b>Supplier Compliance Officer</b>	Name	██████████
		Job Title	████████████████████████████
		Email	██████████████████
		Phone	██████████
30.	<b>Supplier Security Officer</b>	<b>IT Security</b> Name ██████████ Job Title ██ Email ████████████████████ Phone ██████████  <b>Security Controller</b> Name ██████████ Job Title ██ Email ████████████████████ Phone ██████████	

31.	Supplier Marketing Contact	NOT USED
32.	Key Subcontractor	NOT USED
33.	Buyer Authorised Representative	<div>██████████</div> <div>██████████████████</div> <div>██████████████████████████</div> <div>██████████████</div>
34.	Buyer Contract Manager	<div>██████████████████</div> <div>██████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████</div>

For and on behalf of the Supplier:		For and on behalf of the Buyer	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:	29 <sup>th</sup> April 2024	Date:	30 April 2024



## Core Terms

### 1. Definitions Used In The Contract

Interpret this Contract using Schedule 1 (Definitions).

### 2. How The Contract Works

- 2.1 If the Buyer decides to buy Deliverables under this Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
  - 2.1.1 make changes to the Award Form;
  - 2.1.2 create new Schedules;
  - 2.1.3 exclude optional template Schedules; and
  - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 The Contract:
  - 2.2.1 is between the Supplier and the Buyer; and
  - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under this Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
  - 2.4.1 the Buyer's requirements for the Deliverables;
  - 2.4.2 the Buyer's operating processes and working methods; and
  - 2.4.3 the ownership and fitness for purpose of the Buyer Assets, and it has advised the Buyer in writing of:
  - 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
  - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
  - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in this Contract.
- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - 2.5.1 verify the accuracy of the Due Diligence Information; and
  - 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

- 2.8 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Buyer by the Supplier in connection with the supply of the Services and shall pay the Buyer any extra costs occasioned due to the Buyer as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Buyer.

### **3. What Needs To Be Delivered**

#### **3.1 All deliverables**

3.1.1 The Supplier must provide Deliverables:

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

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

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

- (a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- (d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

3.1.4 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality

Standards authorisation body [and the standards specified in this Contract].

### **3.2 Goods clauses – Not Used**

### **3.3 Services Clauses**

- 3.3.1 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.2 The Supplier shall supply the Services during the Contract Period in accordance with the Buyer's requirements as set out in this Contract.
- 3.3.3 The Buyer may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 3.3.4 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.

## **4. Pricing and Payments**

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice issued in accordance with Clause 4.15; and
  - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 Where the Supplier submits an invoice to the Buyer in accordance with Clause 4.4, the Buyer will consider and verify that invoice in a timely fashion.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and
  - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

- 4.7 The Buyer shall pay the Charges due to the Supplier under such an invoice no later than a period of thirty (30) days from the date on which the Buyer has determined that the invoice is valid and undisputed.
- 4.8 Where the Buyer fails to comply with Clause 4.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.8 after a reasonable period of time has passed.
- 4.9 Interest shall be payable by the Buyer on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- 4.10 The Supplier shall add VAT to the Charges at the prevailing rate as applicable and the Buyer shall pay VAT to the Supplier following an undisputed claim for payment being notified by the Supplier in accordance with this Clause 4.
- 4.10.1 The Supplier may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Buyer.
- 4.10.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable By the Party who made the overpayment from the Party in receipt of the overpayment.

## **5. The Buyer's Obligations To The Supplier**

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
- 5.1.1 the Buyer cannot terminate this Contract under Clause 14.4.1;
- 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
- 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
- 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 only applies if the Supplier:
- 5.2.1 gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;
- 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
- 5.2.3 mitigated the impact of the Buyer Cause.
- 5.2.4 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Buyer, an appropriate allowance by way of extension of time will be approved by the Buyer. In addition, the Buyer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **6. Record Keeping and Reporting**

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract including the Services supplied under it, all expenditure reimbursed by the Buyer, and all payments made by the Buyer for 7 years after the End Date, or as long a period as may be agreed between the parties and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit. The Supplier shall on request afford the Buyer or the Buyer's Representatives such access to those records as may be requested by the Buyer in connection with the Contract.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
  - 6.3.1 on or before the Effective Date;
  - 6.3.2 at the end of each Contract Year; and
  - 6.3.3 within six (6) Months of the end of the Contract Period,
  - 6.3.4 and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.
- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
  - 6.4.1 Supplier's currently incurred or forecast future Costs; and
  - 6.4.2 forecast Charges for the remainder of this Contract,
  - 6.4.3 then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5 The Supplier must allow any Auditor access, free of charge during normal business hours on reasonable notice to their premises, to all such documents and other information as the Auditor may reasonably require for the purpose of their financial Audit of the Buyer, for carrying out examinations into the economy, efficiency and effectiveness with which the Buyer has used its resources and to verify all Contract accounts and records of everything to do with the Contract and provide copies for an Audit. The Supplier shall provide such explanations as are reasonably required for these purposes. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under Section 6(3) (d) and (5) of the National Audit Act 1983.
- 6.6 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
  - 6.6.1 complies with the Supplier's operating procedures; and
  - 6.6.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.

- 6.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses 6.11 to 6.17 (inclusive), unless an Audit identifies a material Default by the Supplier in which case the Supplier shall reimburse:-
- 6.7.1 The Buyer for all the Buyer's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
  - 6.7.2 Where the Buyer, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an Audit under this clause, the Buyer shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.
- 6.8 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
- 6.9.1 correcting any identified Default;
  - 6.9.2 rectifying any error identified in a Financial Report; and
  - 6.9.3 repaying any Charges that the Buyer has overpaid.
- 6.10 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 6.10.1 tell the Buyer and give reasons;
  - 6.10.2 propose corrective action; and
  - 6.10.3 provide a deadline for completing the corrective action.
- 6.11 Except where an Audit is imposed on the Buyer by a regulatory body, the Buyer may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an Audit for the following purposes:
- (a) to confirm the accuracy of any Charges that become due and payable by the Buyer to the Supplier in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Supplier (including Subcontractors) in the provision of Services;
  - (b) to review the integrity, confidentiality and availability of the Buyer Data;
  - (c) to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;
  - (d) to review the Supplier's compliance with its obligations under the Contract;
  - (e) to review any records created during the provision of the Services;
  - (f) to review any books of account kept by the Supplier in connection with the provision of the Services;
  - (g) to carry out the Audit and certification of the Buyer's accounts;
  - (h) 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; and

- (i) to verify the accuracy and completeness of any management information delivered or required by this Contract.
- 6.12 The Buyer shall 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.
- 6.13 Subject to the Buyer's obligations of confidentiality, the Supplier shall on demand provide the Buyer, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each Audit, including:-
  - (a) all Information requested within the permitted scope of the Audit;
  - (b) reasonable access to any Premises or sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier Staff;
  - (d) access to the Supplier's Systems Environment; and
  - (e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.
- 6.14 The Buyer shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an Audit.
- 6.15 If an Audit identifies that: -
  - (a) the Supplier has committed a Notifiable Default capable of remedy; the Supplier shall correct such Notifiable Default as soon as reasonably practicable and as directed by the Buyer in accordance with Clause 11;
  - (b) the Buyer has overpaid any Charges that become due and payable by the Buyer to the Supplier in respect of the Services, the Supplier shall pay to the Buyer the amount overpaid within twenty (20) Working Days. The Buyer may deduct the relevant amount from the charges if the Supplier fails to make this payment; and
  - (c) the Buyer has underpaid any Charges that become due and payable by the Buyer to the Supplier in respect of the Services, the Buyer shall pay to the Supplier the amount of the under-payment less the cost of Audit incurred by the Buyer if this was due to a Default by the Supplier within twenty (20) Working Days.
- 6.16 The Supplier shall permit the Buyer and/or its appointed representatives access to conduct an Audit (an "**Exceptional Audit**") of the Supplier in any of the following circumstances:-

- (a) actual or suspected impropriety or Fraud;
- (b) there are reasonable grounds to suspect that:-
  - (i) the Supplier is in Default under the Contract;
  - (ii) the Guarantor may be in default of the Guarantee;
  - (iii) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt has occurred; or
  - (iv) a breach of the Security Policies and Standards has occurred under the Contract,
 (each an "**Exceptional Circumstance**").

6.17 If the Buyer notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Clause 6.13 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours. The requirement to give up to forty-eight (48) hours under this Clause 6.17 shall not apply if the Buyer reasonably believes that the Supplier is in Default of any of its obligations under this Contract or Data Protection Legislation.

## 7. Supplier Staff

- 7.1 The Supplier Staff involved in the performance of this Contract must:
  - 7.1.1 be appropriately trained and qualified;
  - 7.1.2 comply with all such rules, regulations and requirements (including those relating to security arrangements) of this Contract as may be in force from time to time for the conduct of staff when at or outside the Buyer's Premises..
- 7.2 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- 7.3 The Supplier shall provide training on a continuing basis for all Supplier Staff employed or engaged in the provision of the Services in compliance with the Security Policies and Standards.
- 7.4 The Supplier shall use all reasonable endeavours to ensure that the Supplier Staff who are not UK nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. The Supplier shall promptly take all reasonable steps to ensure compliance with this Clause.



- 7.5 The Supplier shall immediately inform the Buyer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 7.6 In the event of industrial action by the Supplier Staff, the Supplier shall seek Approval in relation to its proposals to continue to perform its obligations under the Contract. If the Supplier's proposals referred to in this clause 7.10 are considered insufficient or unacceptable by the Buyer (acting reasonably), the Buyer may terminate the contract with immediate effect or such period as specified by the Buyer by notice in writing.
- 7.7 The Supplier shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006 (as amended), the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 (as amended) and the Protection of Vulnerable Groups (Scotland) Act 2007 (as amended) or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 7.8 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Buyer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the Contract management of the Services without that other Party's prior written consent.

## **8. Supply Chain**

### **8.1 Appointing Subcontractors**

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

- (a) manage Subcontractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract; and
- (c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

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

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

- (a) allow the Supplier to terminate the Sub Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- (b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice;

- (c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded;
- (d) have the same effect as Clauses 4.3, 4.8 and 4.9 of the Contract; and
- (e) that require the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as Clauses 4.3, 4.8 and 4.9 of the Contract.

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

- (a) allow the Supplier to terminate the Sub Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- (b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- (c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded;
- (d) have the same effect as Clauses 4.3, 4.8 and 4.9 of the Contract; and
- (e) that require the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as Clauses 4.3, 4.8 and 4.9 of the Contract.

8.2.3 At the Buyer's request, the Supplier must terminate any Sub-Contracts or not appoint the Subcontractor in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Buyer considers under Regulation 71(8) of the Public Contracts Regulations 2015 whether there are grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

### **8.3 When Sub-Contracts Can be Ended**

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;

- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

## **8.4 Competitive Terms**

- 8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- 8.4.2 If the Buyer uses Clause 8.4.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

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

- 8.5.1 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.
- 8.5.2 At the Buyer's request, the Supplier must terminate any Sub-Contracts or not appoint the Subcontractor in any of the following events:
  - (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
  - (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
  - (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
  - (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
  - (e) the Buyer considers under Regulation 71(8) of the Public Contracts Regulations 2015 whether there are grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

## **8.6 When Sub-Contracts Can be Ended**

- 8.6.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
  - (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;

- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 0;
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

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- 8.7.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- 8.7.2 If the Buyer uses Clause 8.4.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

## **8.8 Ongoing responsibility of the Supplier**

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

## **9. Rights and Protection**

- 9.1 The Supplier warrants and represents that:
  - 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
  - 9.1.2 this Contract is entered into by its authorised representative;
  - 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
  - 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;
  - 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under this Contract and for the Buyer to receive the Deliverables;
  - 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
  - 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and

- 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Effective Date or been subject to an investigation relating to a Prohibited Act.
- 9.1.9 in the three (3) years prior to the date of the Contract:
  - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract;
- 9.1.10 in entering the Contract it has not committed any Fraud;
  - as at the Commencement Date, all information in the Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Buyer prior to execution of the Contract and during the Contract Period the Supplier shall disclose any change to the information referred to in this Clause 9.1.11 and information in relation to the Prohibited Acts;
- 9.1.11 that it is not aware of any financial or other advantage being given to any person working for or engaged by the Buyer, or that an agreement has been reached to that effect, in connection with the execution of the Contract; and
- 9.1.12 that as at the Effective Date, it has notified the Buyer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any occasions of Tax Non-Compliance.
- 9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under this Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
  - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts this Contract; and
  - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 All claims indemnified under this Contract must use Clause 31.
- 9.5 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.

- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

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

- 10.1 The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.
- 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
  - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

## **11. Rectifying issues**

- 11.1 If:
- (a) the Buyer reasonably believes there is a Default: or
  - (b) there is a Notifiable Default the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default,
- and the Buyer may, without limiting its other rights, request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that that Buyer requires.

- 11.2 When the Buyer receives a requested Rectification Plan it can either:
  - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
  - 11.3.1 will give reasonable grounds for its decision; and
  - 11.3.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

## 12. Escalating Issues

- 12.1 If the Supplier fails to:
  - 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3 and
  - 12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.  
or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.
- 12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 12.3 If the Supplier is in Default of any of its obligations under this Clause 0, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

## 13. Step-in Rights

- 13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 0 and setting out:
- 13.1.1 whether it will be taking action itself or with the assistance of a third party;
  - 13.1.2 what Required Action the Buyer will take during the Step-In Process;
  - 13.1.3 when the Required Action will begin and how long it will continue for;
  - 13.1.4 whether the Buyer will require access to the Sites; and
  - 13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 13.2 For as long as the Required Action is taking place:
- 13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
  - 13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
  - 13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 0, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
  - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

## 14. Ending the Contract

- 14.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.
- 14.2 The Buyer can extend this Contract for the Extension Period by giving the Supplier written notice before this Contract expires as described in the Award Form.

### 14.3 Ending the contract without a reason



The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than ninety (90) days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clause 14.6.3 applies.

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

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

- (a) There is a Supplier Insolvency Event;
- (b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance;
- (c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (d) the Buyer rejects a Rectification Plan, or the Supplier does not provide it within 10 days of the request;
- (e) there's any Material Default of the Contract;
- (f) a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;
- (g) there is any material Default of any Joint Controller Agreement relating to the Contract;
- (h) there is a Default of Clauses 2.6, 9, 14, 15, 27, 32, Schedule 19 (Cyber Essentials) (where applicable) or Schedule 36 (Intellectual Property Rights) relating to the Contract;
- (i) the performance of the Supplier causes a Critical Service Level Failure to occur;
- (j) there is consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- (k) there is a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (l) the Buyer discover that the Supplier was in one of the situations in Regulation 57(1) and/or 57(2) of Regulations at the time the Contract was awarded;
- (m) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;
- (n) the Supplier fails to comply with its legal obligations in the field of environmental, social, equality or employment Law when providing the Deliverables; and/or
- (o) the Contract has been subject to substantial modification which would have required a new procurement in accordance with Regulation 72(9) of the Public Contracts Regulations 2015.

14.4.2 If any of the events in 73(1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate this Contract and Clauses 14.5.1 (b) to 14.5.1(g) apply.

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

14.5.1 Where the Buyer terminates this Contract under Clauses 14.4.1, 10.4 and 12.3, Paragraph 7 of Part D of Schedule 7 (Staff Transfer), Paragraph 2.2 of Schedule 12 (Benchmarking) (where applicable) Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable) or Paragraphs 3.1.12.2 or 3.3.1.2 of Part A of Schedule 26 (Sustainability) all of the following apply:

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

14.5.2 If either Party terminates this Contract under Clause 14.3:

- (a) each party must cover its own Losses; and
- (b) Clauses 14.5.1(b) to 14.5.1(g) apply.

14.5.3 The following Clauses survive the termination or expiry of this Contract: 4, 6, 7.4, 7.5, 7.1.2, 10, 14.5, 14.6.3, 15, 18, 19, 21, 22, 23, 24, 40, 41, Schedule 1 (Definitions), Schedule 3 (Charges), Schedule 7 (Staff Transfer), Schedule 30 (Exit Management)) (if used), Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

## **14.6 When the Supplier (and the Buyer) can end the contract**

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

14.6.2 The Supplier also has the right to terminate this Contract in accordance with Clauses 25 and 28.5.

14.6.3 Where the Buyer terminates this Contract under Clause 14.3 or the Supplier terminates this Contract under Clause 14.6.1 or 28.5:

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

## **14.7 Partially ending and suspending the contract**

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

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

14.7.3 The Parties must agree any necessary Variation required by this Clause 0 using the Variation Procedure, but the Supplier may not either:

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

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

## **15. How Much You Can Be Held Responsible For**

15.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more [REDACTED]

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and/or

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

- 15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:
- 15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
  - 15.3.3 any liability that cannot be excluded or limited by Law.
- 15.4 In spite of Clause 15.1 the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, 9.3.2 and 10.2 or Schedule 7 (Staff Transfer) of this Contract.
- 15.5 In spite of Clause 15.1, The Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (Staff Transfer) of this Contract.
- 15.6 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.
- 15.8 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
- 15.8.1 Deductions; and
  - 15.8.2 any items specified in Clause 15.4.
- 15.9 If more than one Supplier is party to this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **16. Obeying the Law**

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:

16.2.1 the Official Secrets Acts 1911 to 1989; and

16.2.2 section 182 of the Finance Act 1989.

16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.

16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 32 to 37.

## **17. Insurance**

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

## **18. Data Protection and Security**

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

18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location, and send the Buyer copies via a secure encrypted method upon reasonable request.

18.4 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy and the security requirements specified in the Award Form. and otherwise as required by Data Protection Legislation.

18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.

18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:

18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and

18.6.2 restore the Government Data itself or using a third party.

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

## 18.8 The Supplier:

- 18.8.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;
- 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
- 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
- 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

## 19. What You Must Keep Confidential

### 19.1 Each Party must:

- 19.1.1 keep all Confidential Information it receives confidential and secure;
- 19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and
- 19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

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

- 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
- 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
- 19.2.4 if the information was in the public domain at the time of the disclosure;
- 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
- 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;

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

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

19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

## **20. The Buyer May Disclose Confidential Information In Any Of The Following Cases:**

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

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

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

20.4 where requested by Parliament;

20.5 under Clauses 4.6 and 21; and

20.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 and Schedule 30 (if used).

20.7 For the purposes of Clauses 19.2 to 20 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.

20.8 Transparency Information and any information which is exempt from disclosure by Clause 21 is not Confidential Information.

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

## **21. When You Can Share Information**

21.1 The Supplier must tell the Buyer within forty-eight (48) hours if it receives a Request For Information.

- 21.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

21.2.1 publish the Transparency Information; and

21.2.2 comply with any Request for Information.

- 21.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 21.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## **22. Invalid Parts Of The Contract**

If any provision or part provision of this Contract 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 Contract.

## **23. No Other Terms Apply**

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

## **24. Other People's Rights In This Contract**

- 24.1 The provisions of Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3 and 3.1 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (Staff Transfer) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (Exit Management) (together "Third Party Provisions") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("CRTPA").
- 24.2 Subject to Clause 24.1, no third parties may use the CRTPA to enforce any term of this Contract unless stated (referring to CRTPA) in this Contract. This does not affect third party rights and remedies that exist independently from CRTPA.
- 24.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.



- 24.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 24.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## **25. Circumstances Beyond Your Control**

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

25.1.1 provides a Force Majeure Notice to the other Party; and

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

- 25.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

- 25.3 Either party can partially or fully terminate this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

## **26. Relationships Created By The Contract**

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

## **27. Giving Up Contract Rights**

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

## **28. Transferring Responsibilities**

- 28.1 The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer's written consent.
- 28.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot sub-contract this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer

does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

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

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

28.2.3 the proposed Subcontractor employs unfit persons.

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

28.4 When the Buyer uses its rights under Clause 28.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

28.5 The Supplier can terminate this Contract novated under Clause 28.3 to a private sector body that is experiencing an Insolvency Event.

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

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

28.7.1 their name;

28.7.2 the scope of their appointment;

28.7.3 the duration of their appointment; and

28.7.4 a copy of the Sub-Contract.

## **29. Changing The Contract**

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

29.2 The Supplier must provide an Impact Assessment either:

29.2.1 with the Variation Form, where the Supplier requests the Variation; and

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

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

29.3.1 agree that this Contract continues without the Variation; and

- 29.3.2 refer the Dispute to be resolved using Clause 40 (Resolving Disputes).
- 29.4 The Buyer is not required to accept a Variation request made by the Supplier.
- 29.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
- 29.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
  - 29.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 29.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 29.7 If there is a Specific Change in Law or one is likely to happen during this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or this Contract and provide evidence:
- 29.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - 29.7.2 of how it has affected the Supplier's costs.
- 29.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 29.1 to 29.4.

## **30. How To Communicate About The Contract**

- 30.1 All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 30.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 30.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **31. Dealing With Claims**

- 31.1 If a Beneficiary is notified of a Claim, then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.
- 31.2 At the Indemnifier's cost the Beneficiary must both:
- 31.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - 31.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 31.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 31.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 31.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 31.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 31.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- 31.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
  - 31.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

## **32. Preventing Fraud, Bribery and Corruption**

- 32.1 The Supplier must not during the Contract Period:
- 32.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
  - 32.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 32.2 The Supplier must during the Contract Period:
- 32.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;

- 32.2.2 keep full records to show it has complied with its obligations under this Clause 32 and give copies to the Buyer on request; and
- 32.2.3 if required by the Buyer, within twenty (20) Working Days of the Effective Date of this Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 32, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 32.3 The Supplier must immediately notify the Buyer if it becomes aware of any Default of Clauses 32.1 or has any reason to think that it, or any of the Supplier Staff, have either:
  - 32.3.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 32.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 32.3.3 received a request or demand for any undue financial or other advantage of any kind related to this Contract; and
  - 32.3.4 suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.
- 32.4 If the Supplier notifies the Buyer as required by Clause 32.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 32.5 If the Supplier is in Default under Clause 32.1 the Buyer may:
  - 32.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
  - 32.5.2 immediately terminate this agreement in accordance with Clause 14.4.1 and the consequences of termination in Clauses 14.5.1 shall apply.
- 32.6 In any notice the Supplier gives under Clause 32.4 it must specify the:
  - 32.6.1 Prohibited Act;
  - 32.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
  - 32.6.3 action it has decided to take.

### **33. Equality, Diversity and Human Rights**

- 33.1 The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:

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

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

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

## **34. Health and Safety**

The Supplier must perform its obligations meeting the requirements of all applicable Law regarding health and safety.

## **35. Environment- Not used**

## **36. Tax – Not used**

## **37. Conflict of Interest**

- 37.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 37.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 37.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 14.5.1(b) to 14.5.1(g) shall apply.

## **38. Reporting a Breach of The Contract**

- 38.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected:
- 38.1.1 breach of Law;
  - 38.1.2 Default of Clause 16.1; and
  - 38.1.3 Default of Clauses 32 to 37.
- 38.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 38.1 to the Buyer or a Prescribed Person.

## **39. Further Assurances**

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

## **40. Resolving Disputes**

- 40.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty-eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.
- 40.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 40.4 to 40.6.
- 40.3 Unless the Buyer refers the Dispute to arbitration using Clause 40.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 40.3.1 determine the Dispute;
  - 40.3.2 grant interim remedies; and
  - 40.3.3 grant any other provisional or protective relief.
- 40.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 40.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 40.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 40.5.
- 40.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

## 41. Which Law Applies

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



## Schedule 1 (Definitions)

### 1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
  - 1.3.1 reference to a gender includes the other gender and the neuter;
  - 1.3.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
  - 1.3.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.6 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;
  - 1.3.7 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.8 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
  - 1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;

- 1.3.10 where the Buyer is a Crown Body, the Supplier shall be treated as contracting with the Crown as a whole; and
- 1.3.11 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.
- 1.4 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:
- |                                      |   |
|--------------------------------------|---|
| <b>"Achieve"</b>                     | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly; |
| <b>"Additional FDE Group Member"</b> | means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);   |
| <b>"Affected Party"</b>              | the party seeking to claim relief in respect of a Force Majeure Event;  |
| <b>"Affiliates"</b>                  | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;  |
| <b>"Allowable Assumptions"</b>       | means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);  |
| <b>"Annex"</b>                       | extra information which supports a Schedule;  |
| <b>"Approval"</b>                    | the prior written consent of the Buyer and " <b>Approve</b> " and " <b>Approved</b> " shall be construed accordingly;   |
| <b>"Associates"</b>                  | means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles; |
| <b>"Audit"</b>                       | the Buyer's right to:   |

- (a) verify the integrity and content of any Financial Report;
- (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with this Contract);
- (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
- (d) verify the Open Book Data;
- (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
- (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
- (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- (k) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;

<b>"Auditor"</b>	<ul style="list-style-type: none"> <li>(a) the Buyer's internal and external auditors;</li> <li>(b) the Buyer's statutory or regulatory auditors;</li> <li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>(d) HM Treasury or the Cabinet Office;</li> <li>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</li> <li>(f) successors or assigns of any of the above;</li> </ul>
<b>"Award Form"</b>	the document outlining the Incorporated Terms and crucial information required for this Contract, to be executed by the Supplier and the Buyer;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of this Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	has the meaning given to it in the Award Form;
<b>"Buyer Existing IPR"</b>	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Crown Body, any Crown IPR, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise)
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued

	or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Buyer Third Party"</b>	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
<b>"Buyer's Confidential Information"</b>	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with this Contract; and</p> <p>information derived from any of the above;</p>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of this Contract which comes into force after the Effective Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under this Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;

<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in Schedule 5 (Commercially Sensitive Information (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
<b>"Contract"</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the term of this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, until the End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

**"Core Terms"**

the Buyer's terms and conditions which apply to and comprise one part of this Contract set out in the document called **"Core Terms"**;

**"Costs"**

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

- (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:
  - (i) base salary paid to the Supplier Staff;
  - (ii) employer's National Insurance contributions;
  - (iii) 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 provide the Deliverables (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 Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and
- (d) Reimbursable Expenses to the extent these have been specified as allowable in

the Award Form and are incurred in delivering any Deliverables;

but excluding:

- (a) Overhead;
- (b) financing or similar costs;
- (c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) taxation;
- (e) fines and penalties;
- (f) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and
- (g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"COTS Software" or "Commercial off the shelf Software"**

non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;

**"Critical Service Level Failure"**

has the meaning given to it in the Award Form;

**"Crown Body"**

the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Crown IPR"**

means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);

**"CRTPA"**

the Contract Rights of Third Parties Act 1999;

**"Data Loss Event"**

any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data



	in breach of this Agreement, including any Personal Data Breach.
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under this Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;
<b>"Defect"</b>	any of the following: <ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any</li> </ul>

	adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or
	(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	Goods, Services or software that may be ordered and/or developed under this Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Dependent Parent Undertaking"</b>	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);

<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under this Contract as:</p> <ul style="list-style-type: none"> <li>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>(b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>(c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;

<b>"DPA 2018"</b>	The Data Protection Act 2018;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
<b>"Effective Date"</b>	the date on which the final Party has signed this Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>"End Date"</b>	the earlier of: <ul style="list-style-type: none"> <li>(a) the Expiry Date as extended by the Buyer under Clause 14.2; or</li> <li>(b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;</li> </ul>
<b>"End User"</b>	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under Clause 15.1: <ul style="list-style-type: none"> <li>(a) in the first Contract Year, the Estimated Year 1 Charges; or</li> </ul>

- (b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or
- (c) after the end of this Contract, the Charges paid or payable in the last Contract Year during the Contract Period;

<b>"EU GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Contract (whether prior to the Start Date or otherwise);
<b>"Exit Plan"</b>	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
<b>"Expiry Date"</b>	the date of the end of this Contract as stated in the Award Form;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
<b>"FDE Group"</b>	the Supplier and any Additional FDE Group Member;
<b>"Financial Distress Event"</b>	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material</li> </ul>

sums properly due under a specified invoice and not subject to a genuine dispute;

- (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
  - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
  - (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than ■■■■ or obligations under a service contract with a total contract value greater than ■■■■;
  - (iii) non-payment by any FDE Group entity of any financial indebtedness;
  - (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
  - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or

- (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with this Contract; or

- (j) any of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold;

**"Financial Report"**

a report provided by the Supplier to the Buyer that:

- (a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
- (c) is 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; and
- (d) is certified by the Supplier's Chief Financial Officer or Director of Finance;

**"Financial Transparency Objectives"**

means:

- (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;
- (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) the Parties being able to understand the quantitative impact of any Variations that

affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;

- (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;

**"FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**"Force Majeure Event"**

any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
  - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and



	<p>(iii) any failure of delay caused by a lack of funds,</p> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"General Anti-Abuse Rule"</b>	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>
<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Goods"</b>	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
<b>"Good Industry Practice"</b>	At any time the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Buyer; and/or</p>

	<ul style="list-style-type: none"> <li>(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> <li>(b) any Personal Data for which the Buyer is Controller;</li> </ul>
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	His Majesty's Revenue and Customs;
<b>"ICT Environment"</b>	the Buyer System and the Supplier System;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Contract;</li> <li>(b) details of the cost of implementing the proposed Variation;</li> <li>(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> </ul>

	(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Incorporated Terms"</b>	the contractual terms applicable to this Contract specified in the Award Form;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Controller"</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with this Contract;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of this Contract specified in the Award Form;
<b>"Insolvency Event"</b>	with respect to any person, means: <ul style="list-style-type: none"> <li>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:               <ul style="list-style-type: none"> <li>(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</li> <li>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</li> </ul> </li> <li>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a</li> </ul>

moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
  - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
  - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
  - (iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

	<ul style="list-style-type: none"> <li>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</li> <li>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</li> </ul>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with this Contract;
<b>"Intellectual Property Rights" or "IPR"</b>	<ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IP Completion Day"</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 36 (Intellectual Property Rights) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under this Contract;
<b>"IR35"</b>	<p>the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at:</p> <p><a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a>;</p>

<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
<b>"Joint Control"</b>	where two (2) or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Controllers"</b>	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>(c) with a Sub-Contract with this Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract,</li> </ul> <p>and the Supplier shall list all such Key Subcontractors in the Award Form;</p>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Effective Date;
<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

<b>"Law Enforcement Processing"</b>	processing under Part 3 of the DPA 2018;
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code, or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"Material Default"</b>	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)
<b>"Marketing Contact"</b>	shall be the person identified in the Award Form;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<ul style="list-style-type: none"> <li>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including database schema; and/or</li> <li>(b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</li> </ul>

	but shall not include the Supplier's Existing IPR
<b>"New IPR Item"</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>"Notifiable Default"</b>	means: <ul style="list-style-type: none"> <li>(a) the Supplier commits a Material Default; and/or</li> <li>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</li> </ul>
<b>"Object Code"</b>	software and/or data in machine-readable complied object code form;
<b>"Occasion of Tax Non – Compliance"</b>	where: <ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:             <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>"Open Book Data"</b>	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 this Contract, including details and all assumptions relating to:



- (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
- (b) operating expenditure relating to the provision of the Deliverables including an analysis showing:
  - (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
  - (iii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iv) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
  - (v) Reimbursable Expenses, if allowed under the Award Form;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
- (e) the Supplier Profit achieved over the Contract Period 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 Deliverables, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period;

**"Open Licence"**

means any material that is published for use, with rights to access, copy, modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at

	<a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> , and includes the Open Source publication of Software;
<b>"Open Source"</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>"Open Licence Publication Material"</b>	means items created pursuant to this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;

<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Prohibited Acts"</b>	<ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; or</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</li> </ul> </li> <li>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul>

<b>"Protective Measures"</b>	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 16 (Security);
<b>"Public Sector Body "</b>	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include: <ul style="list-style-type: none"> <li>(a) full details of the Notifiable Default that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Notifiable Default; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);</li> </ul>
<b>"Rectification Plan Process"</b>	the process set out in Clause 11;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the

rates and in accordance with the Buyer's expenses policy current from time to time, but not including:

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

<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);

<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Award Form (if used), in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under this Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>(a) the Deliverables are (or are to be) provided; or</li> <li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> </ul>

	(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of this Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
<b>"Social Value Report"</b>	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used;
<b>"Software"</b>	any software including Specially Written Software, COTS Software and software that is not COTS Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in Schedule 36 (Intellectual Property Rights);
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into this Contract;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of

	the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;
<b>"Specification"</b>	the specification set out in Schedule 2 (Specification);
<b>"Standards"</b>	any: <ul style="list-style-type: none"> <li>(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>(b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>(c) standards agreed between the Parties from time to time;</li> <li>(d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Step-In Process"</b>	the process set out in Clause 13;
<b>"Step-In Trigger Event"</b>	means: <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Service Level Failure;</li> <li>(b) the Supplier committing a Material Default which is irremediable;</li> <li>(c) where a right of termination is expressly reserved in this Contract;</li> <li>(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor;</li> </ul>



- (e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;
- (f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;
- (g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;
- (h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or
- (i) a need by the Buyer to take action to discharge a statutory duty;

**"Step-Out Plan"** means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under this Contract following the completion of the Step-In Process;

**"Storage Media"** the part of any device that is capable of storing and retrieving data;

**"Sub-Contract"** any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party:

- (a) provides the Deliverables (or any part of them);
- (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or
- (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);

**"Subcontractor"** any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;

**"Subprocessor"** any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;

**"Subsidiary Undertaking"** has the meaning set out in section 1162 of the Companies Act 2006;

<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with this Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
<b>"Supplier Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier New and Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to: <ul style="list-style-type: none"> <li>(a) Achieve a Milestone by its Milestone Date;</li> <li>(b) provide the Goods and/or Services in accordance with the Service Levels; and/or</li> <li>(c) comply with an obligation under this Contract;</li> </ul>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of this Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the

	same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under this Contract;
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"> <li>(a) any information, how ever it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;</li> <li>(c) information derived from any of (a) and (b) above;</li> </ul>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under this Contract detailed in the information are properly payable;
<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);

<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 (Exit Management);
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in this Contract;
<b>"Test Plan"</b>	a plan: <ul style="list-style-type: none"> <li>(a) for the Testing of the Deliverables; and</li> <li>(b) setting out other agreed criteria related to the achievement of Milestones;</li> </ul>
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Third Party IPR Licence"</b>	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 (Intellectual Property Rights);
<b>"Transparency Information"</b>	the Transparency Reports and the content of this Contract, including any changes to this Contract agreed from time to time, except for – <ul style="list-style-type: none"> <li>(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and</li> </ul>

	(b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
<b>"UK GDPR"</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
<b>"Variation"</b>	means a variation to this Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 28 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
<b>"Work day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.



## Schedule 2 (Specification)

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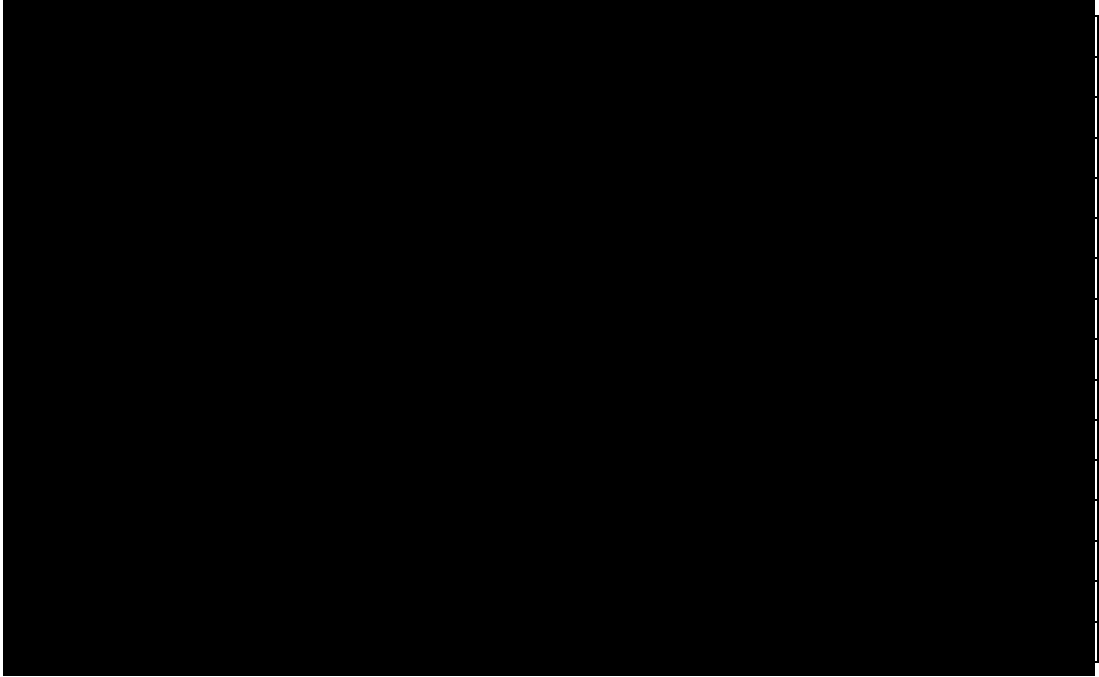
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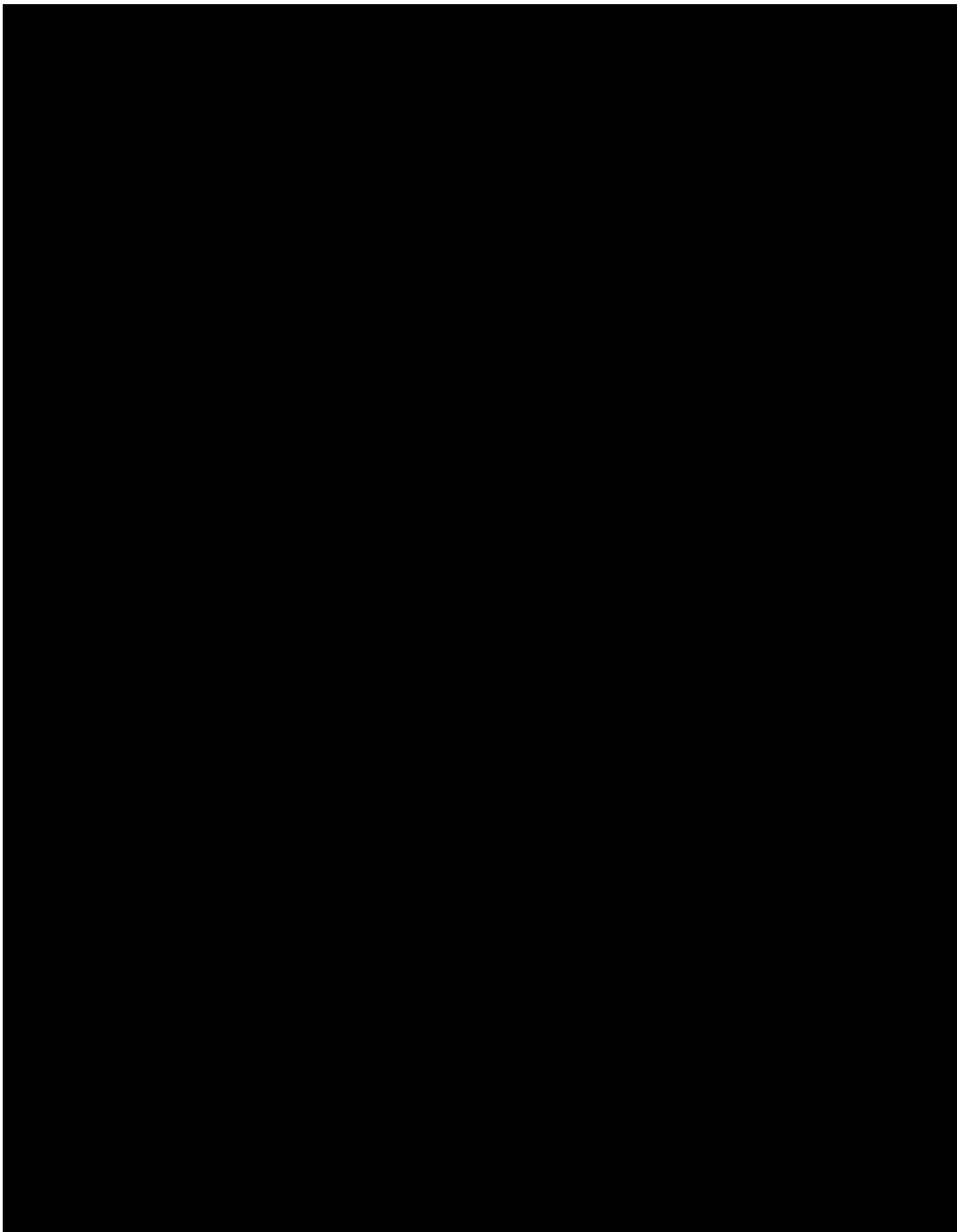
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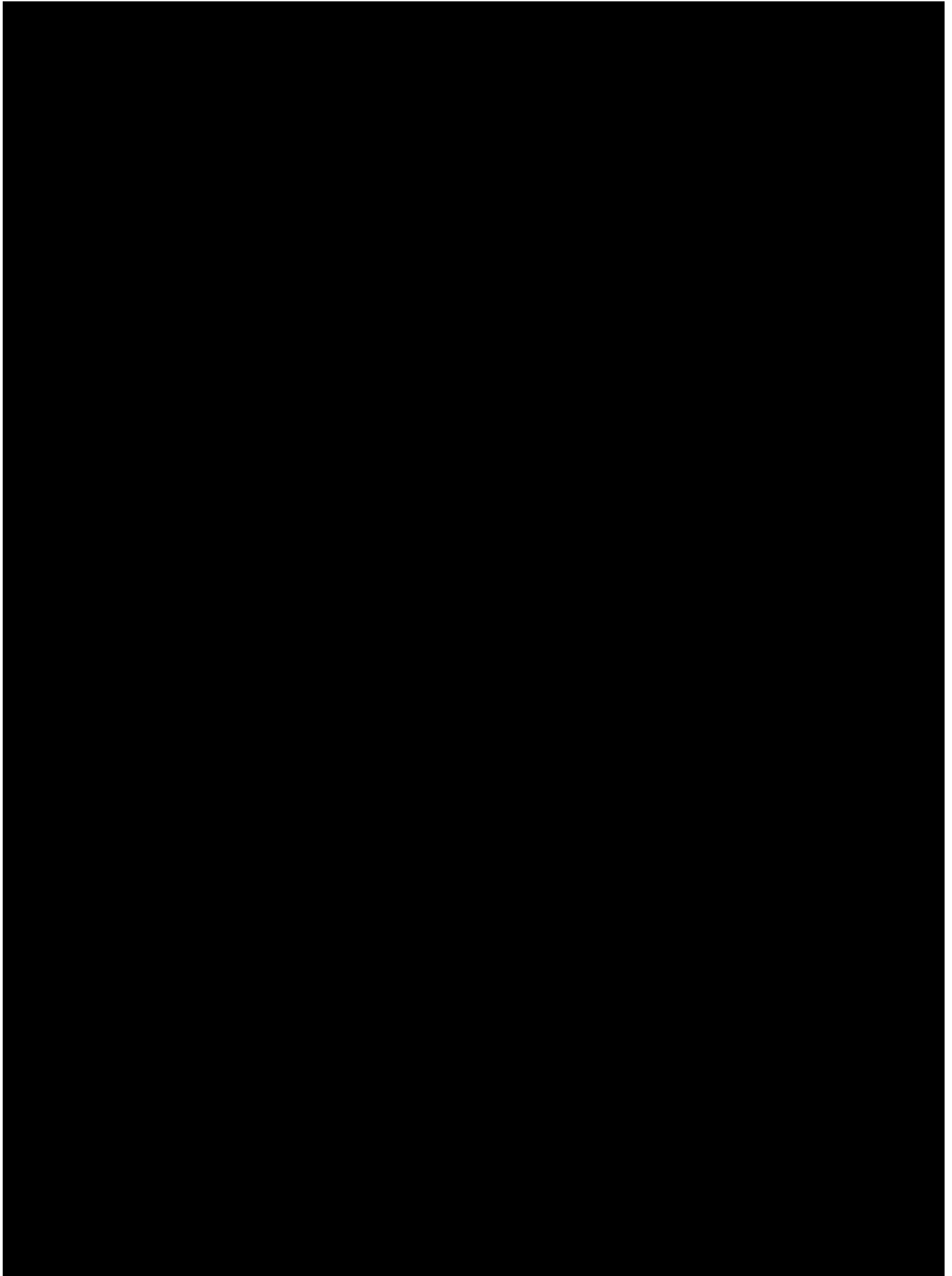
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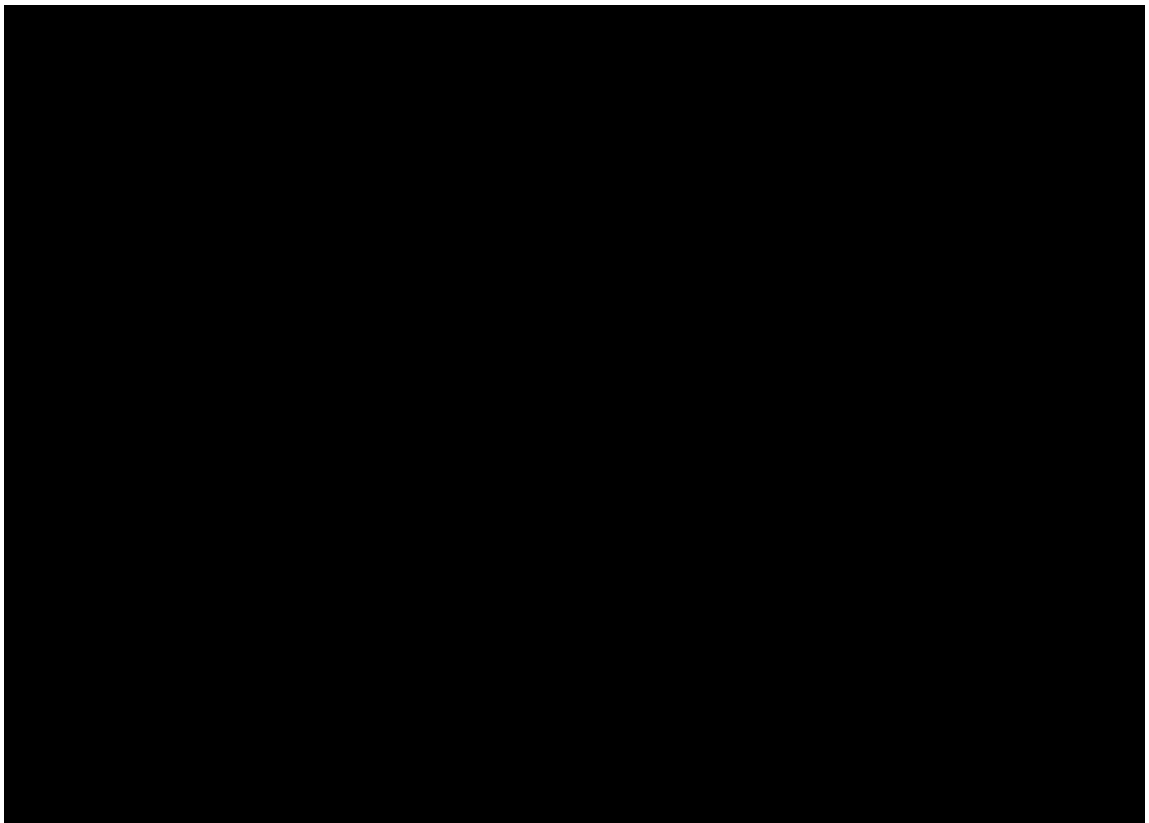
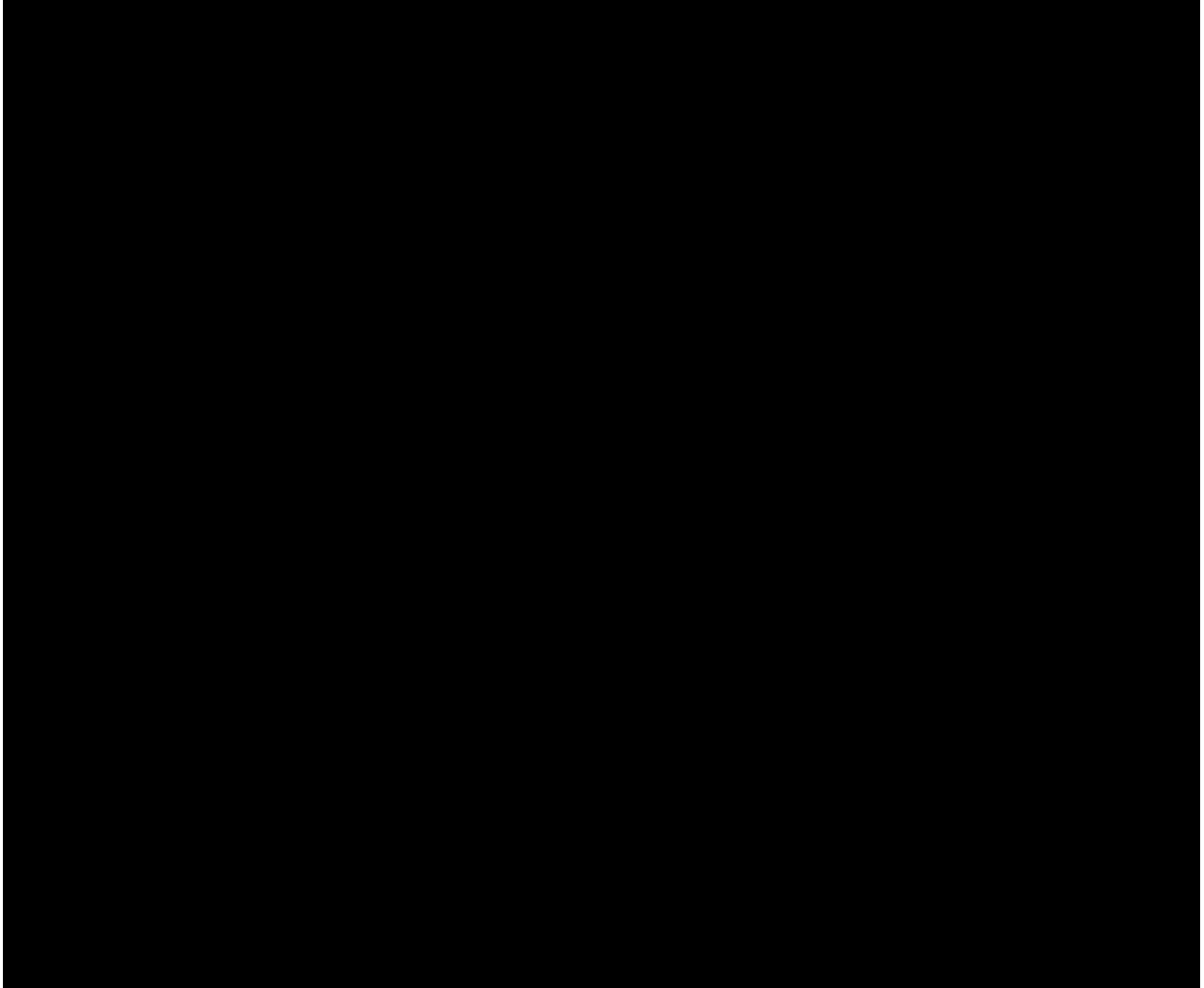
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## Schedule 3 (Charges)

### 1. How Charges Are Calculated

#### 1.1 The Charges:

- 1.1.1 shall be calculated in accordance with the terms of this Schedule;
- 1.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and
- 1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

### 2. The Pricing Mechanisms

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

### 3. When The Supplier Can Ask To Change The Charges

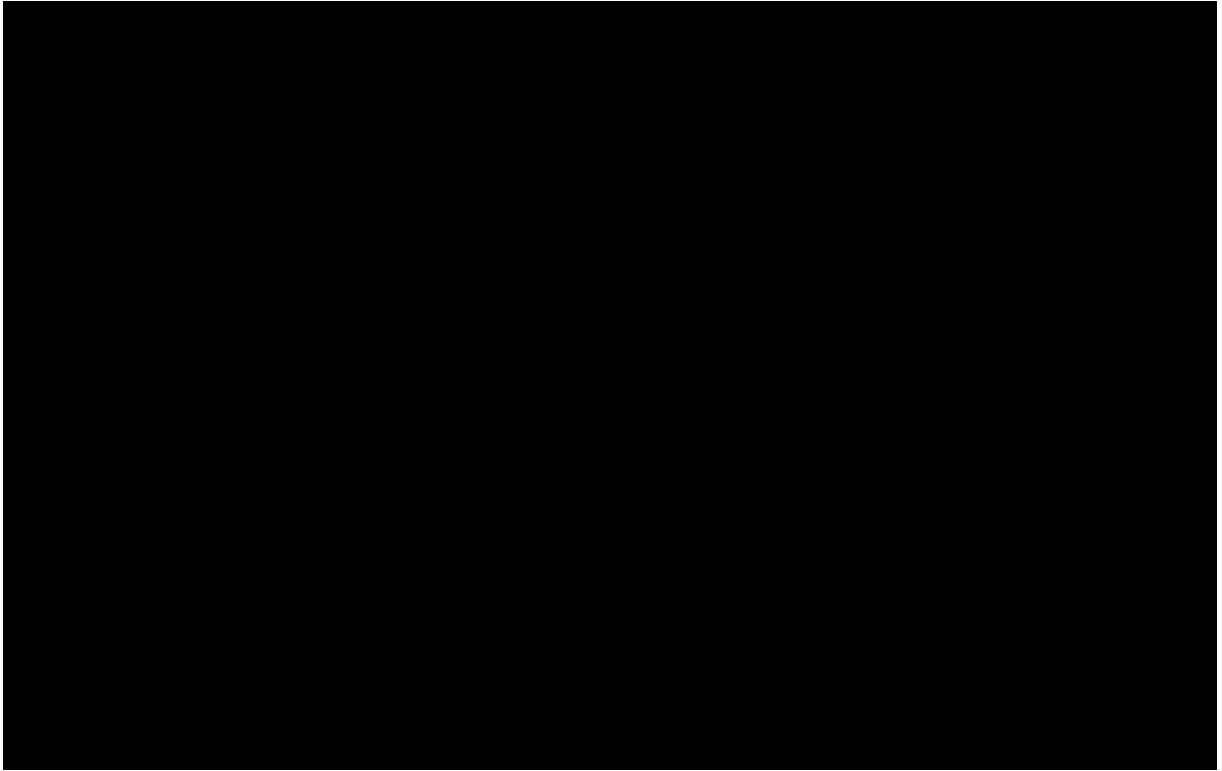
- 3.1 The Charges will be fixed for the first five (**5**) years following the Start Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 3.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time, then it will only be able to request an increase prior to the next Review Date.
- 3.3 Any notice requesting an increase shall include:
  - 3.3.1 a list of the Charges to be reviewed;
  - 3.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
    - 3.3.2.1 details of the movement in the different identified cost components of the relevant Charge;
    - 3.3.2.1 reasons for the movement in the different identified cost components of the relevant Charge;
    - 3.3.2.3 evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components
- 3.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 3.5 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly

#### 4. Other Events That Allow The Supplier To Change The Charges

- 4.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
- 4.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8
  - 4.1.2 a request from the Supplier, which it can make at any time, to decrease the Charges;
  - 4.1.3 verification of the Allowable Assumptions in accordance with Paragraph 9.
- 4.2 The following costs, expenses, fees or charges included in the Charges shall not be subject to adjustment under this Paragraph 4 and shall not be included in the relevant amount or sum for the purposes of Paragraph 4.2.1:
- 4.2.1 Any costs charged by the Supplier to the Buyer in respect of Supplier Assets or Buyer Assets (including capital costs and installation, maintenance and support costs) which are incurred by the Supplier prior to the relevant adjustment date but which remain to be recovered through the Charges.
- 4.3 Expenses shall only be recoverable where:
- 4.3.1 the Time and Materials pricing mechanism is used; and
  - 4.3.2 the Award Form states that recovery is permitted; and
  - 4.3.3 they are Reimbursable Expenses and are supported by Supporting Documentation.
- 4.4. The Buyer shall provide a copy of their current expenses policy to the Supplier upon request.
- 4.5 For cases, the Authority has authorised payment of expenses the Contractor should comply with DWP travel and subsistence policy.

Public transport (bus and train)	Where there are reasonable grounds to expect the use of public transport, reimbursement should be restricted to the cheapest available public transport costs.  The Authority will reimburse the actual fares incurred.
Travel by private motor vehicle	Whilst the Authority encourages the use of public transport, it is recognised that there will be circumstances where this is not possible, for example when a person is infirm or disabled, public transport is not available – in these circumstances motor mileage expenses can be allowed.  The mileage rate permitted is aligned to HMRC Approved Mileage Allowance Payments. HMRC higher rate mileage. HMRC rates are 45p per mile for the first 10,000 miles then 25p per mile thereafter.
Necessary miscellaneous costs	Necessary miscellaneous costs such as parking, bridge tolls, and congestion charges will be permissible for where mileage expenses are being allowed

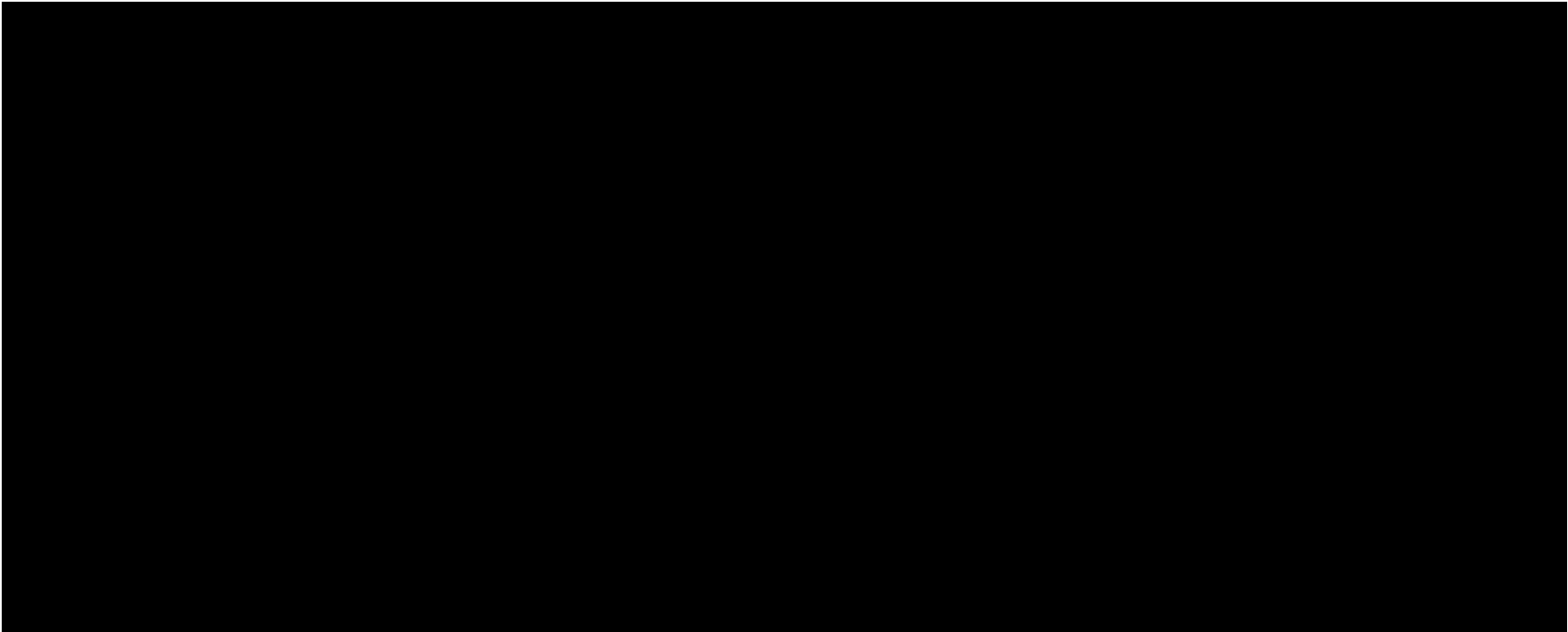
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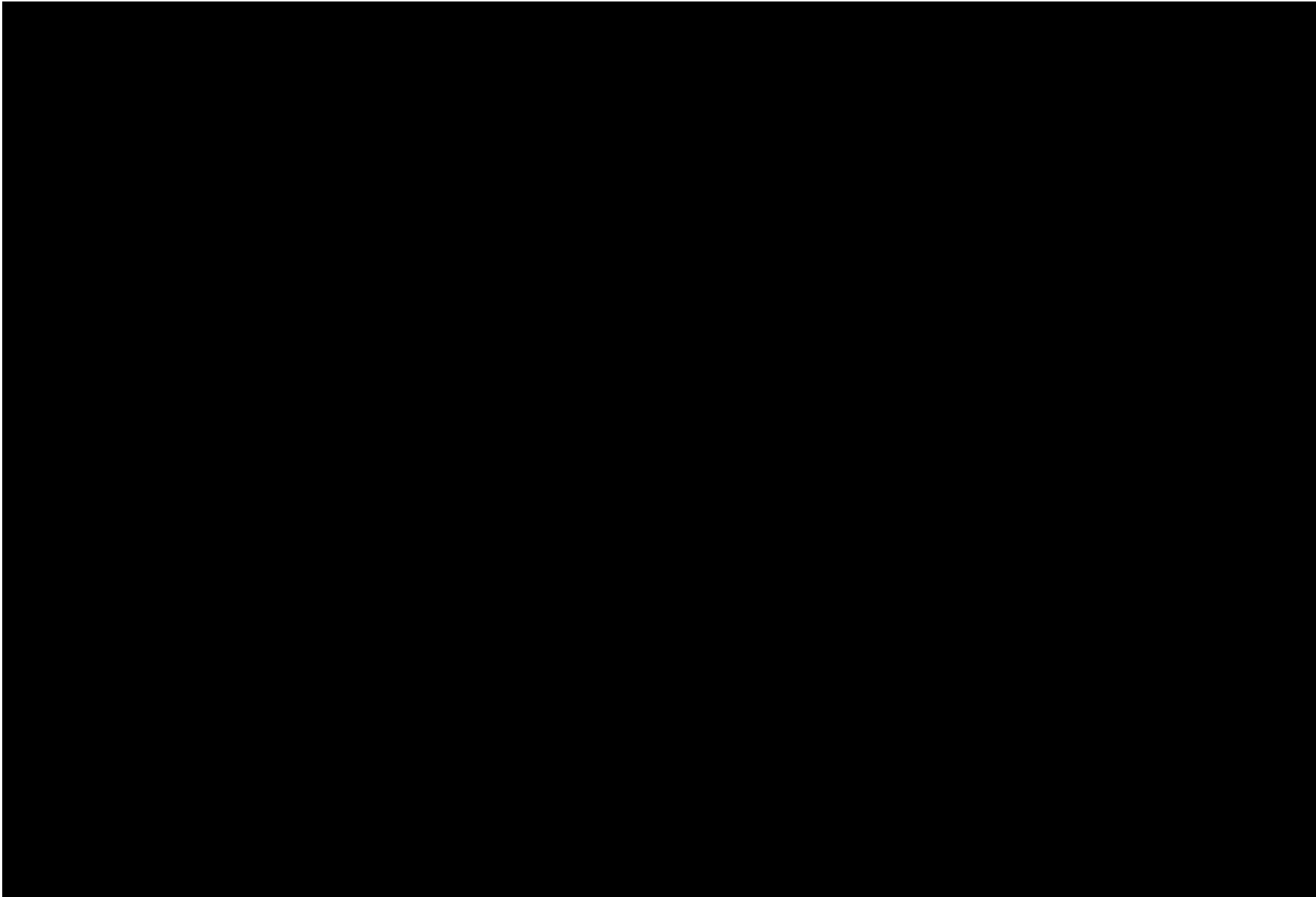


## Annex 1 Rates and Prices

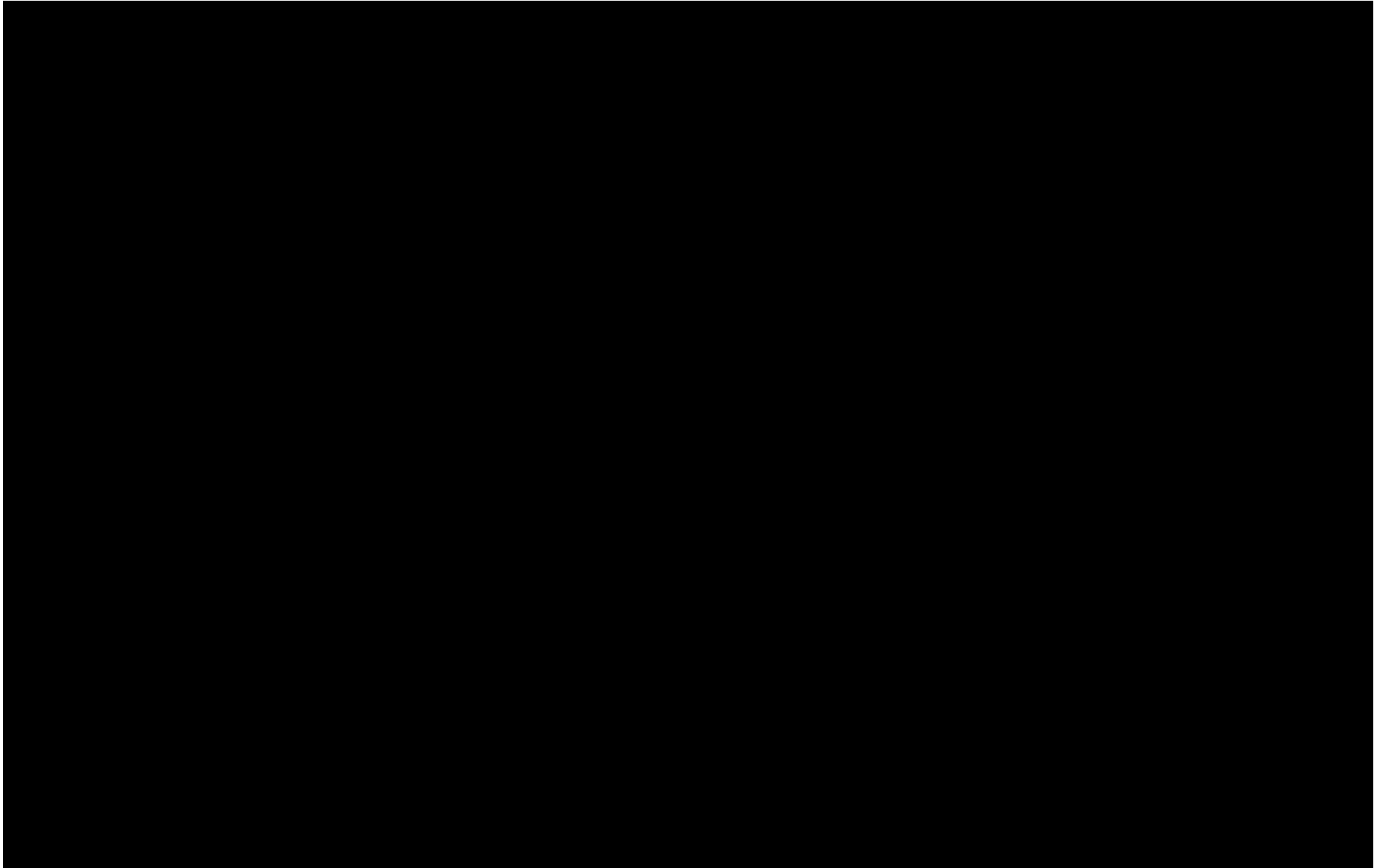


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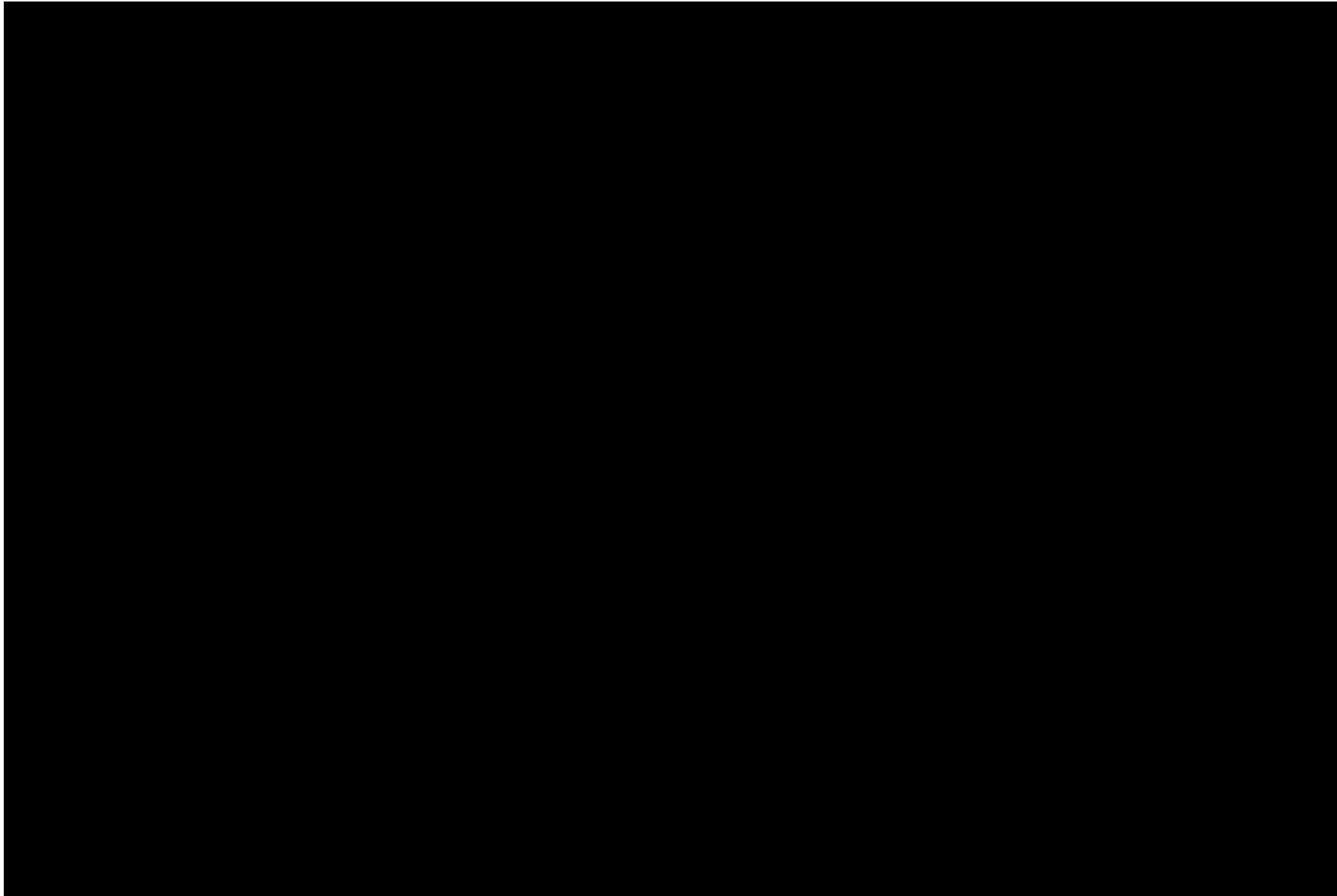




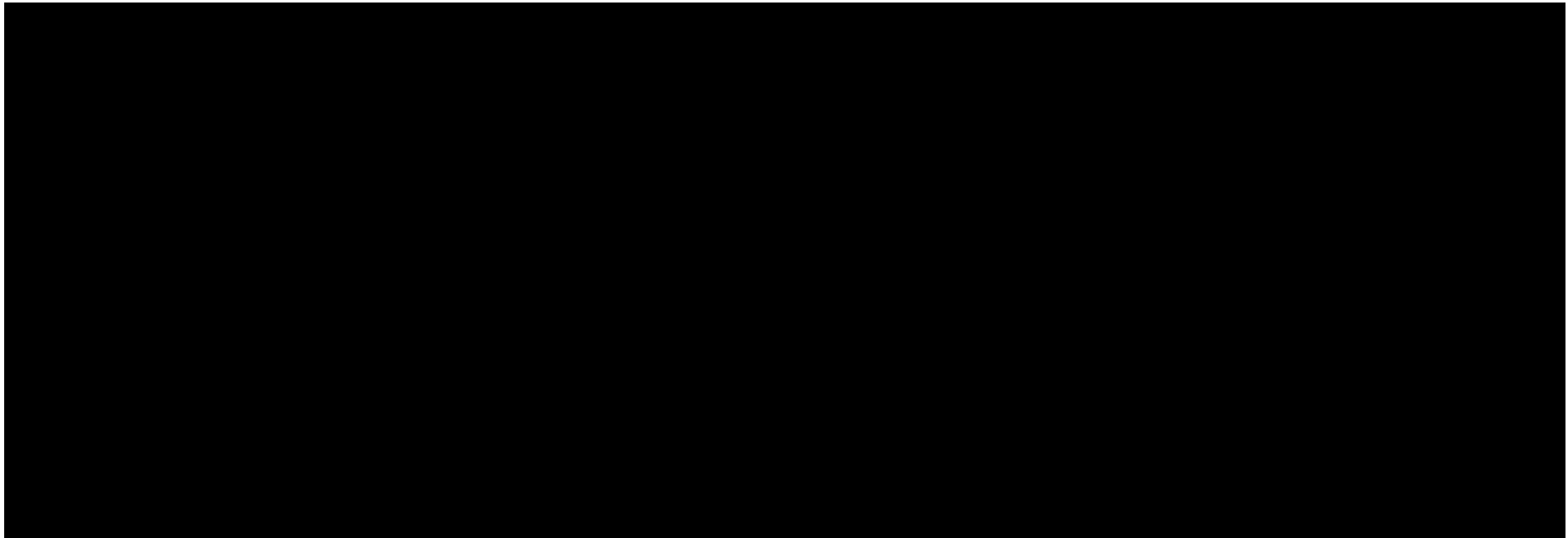
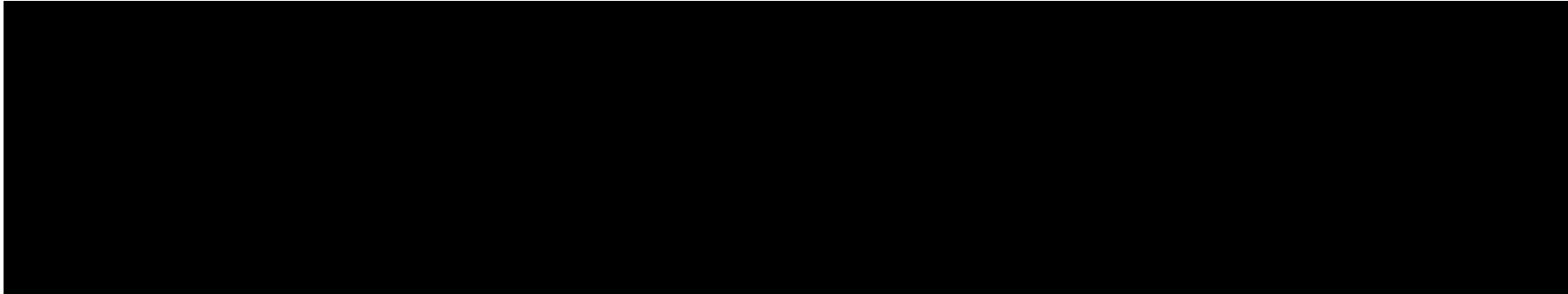
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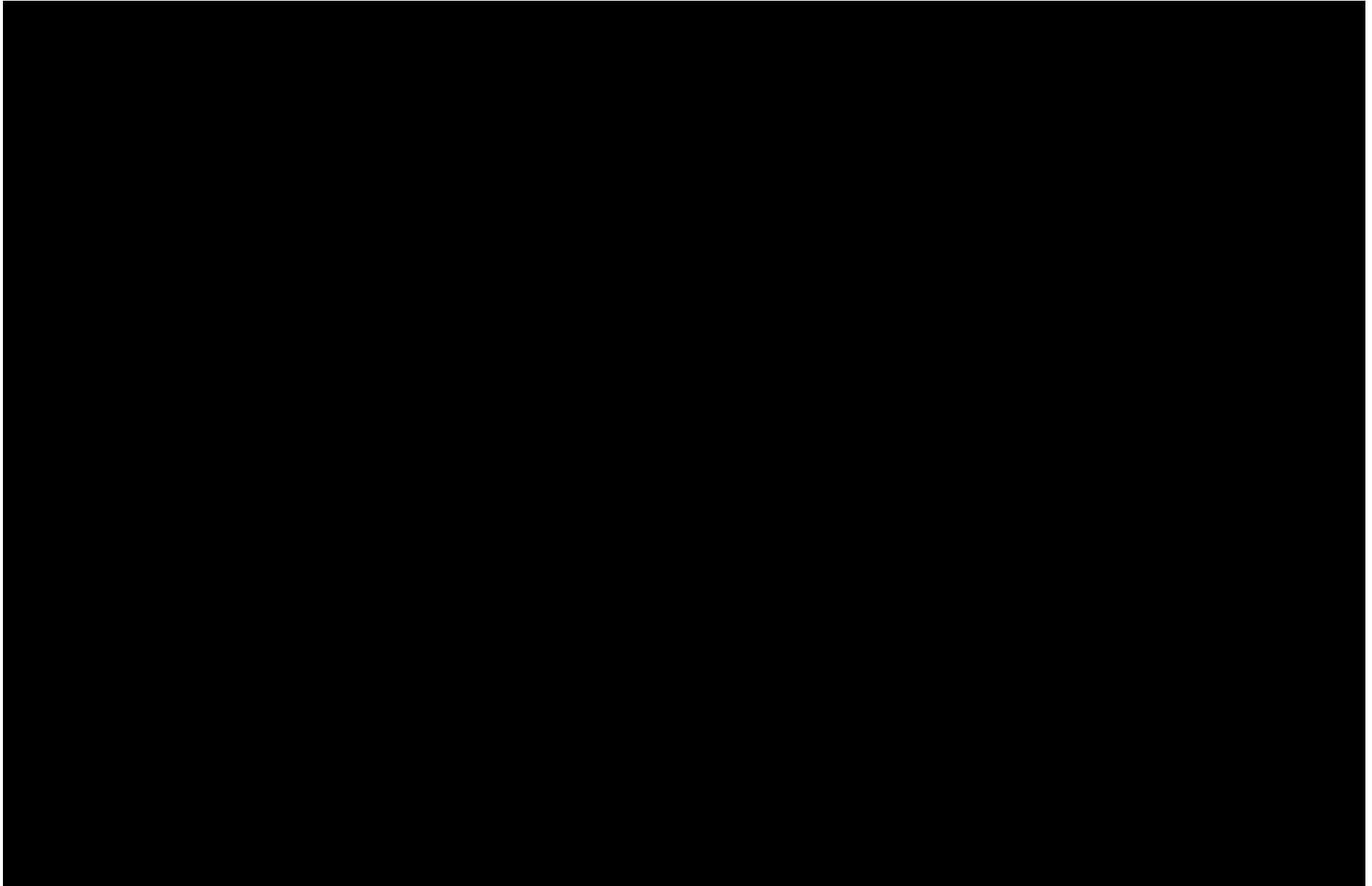




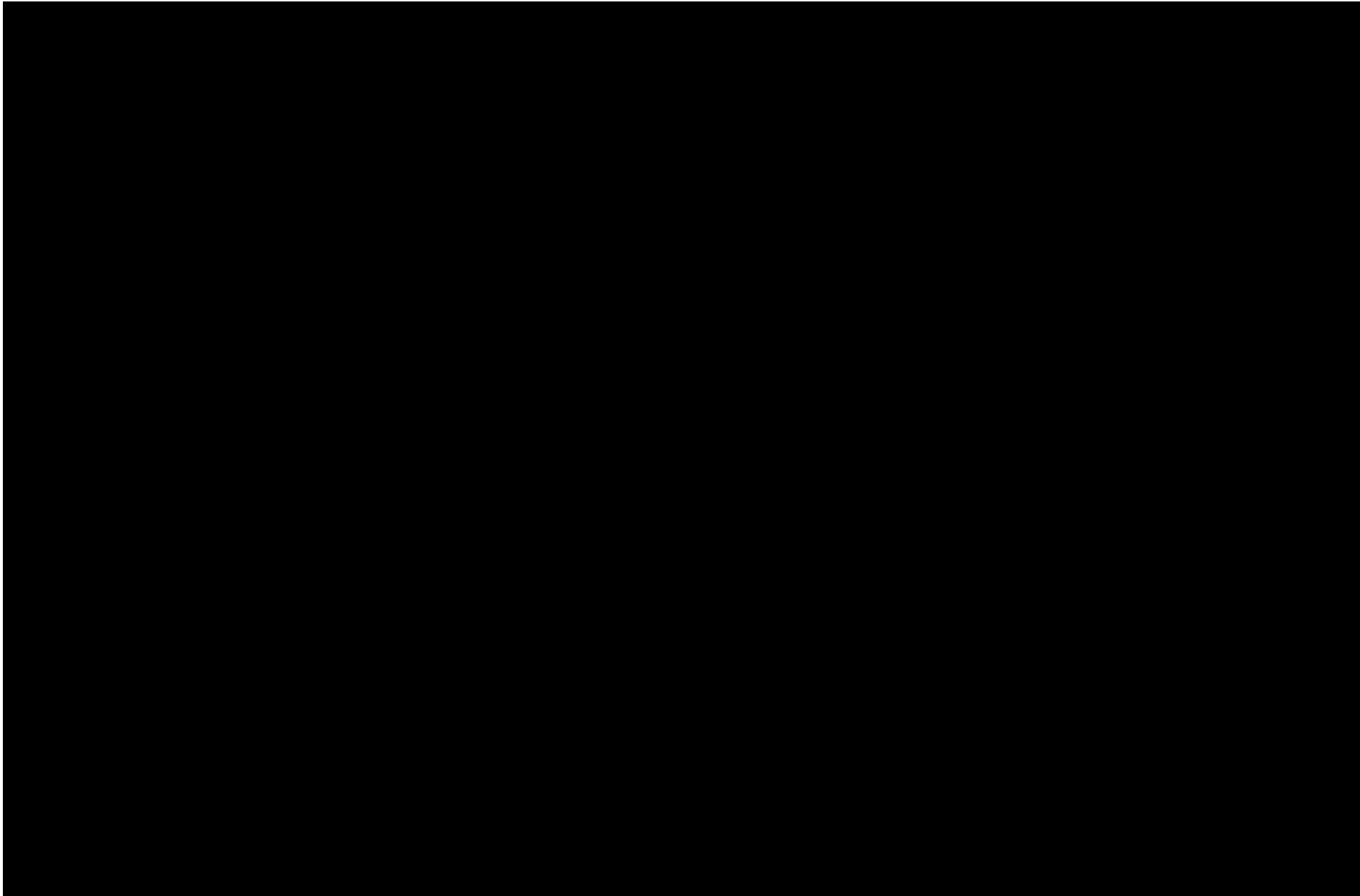
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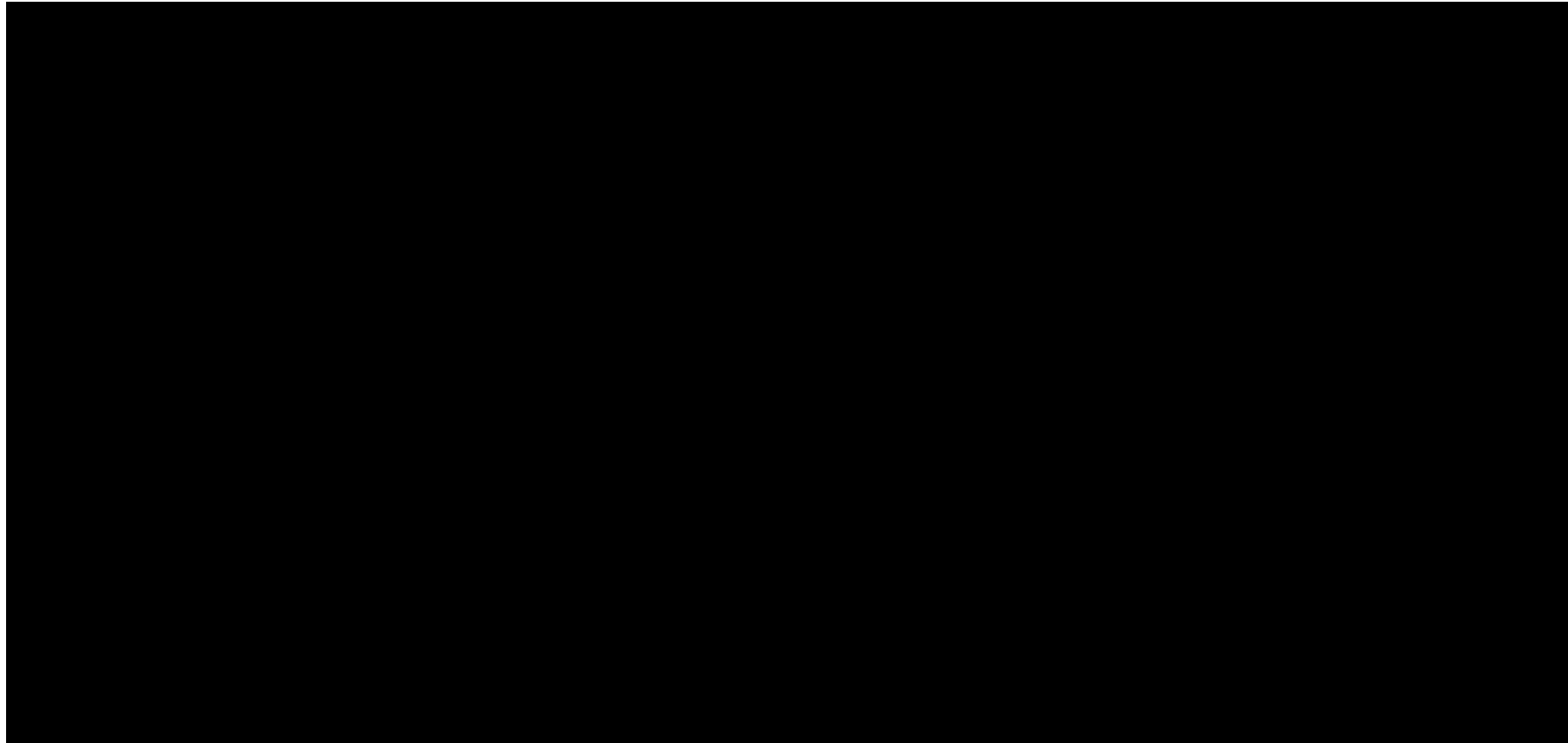
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## **Schedule 4 (Tender)**

### **A2 – Organisation Structure**



### **A3 – Operational Approach and Methodology**

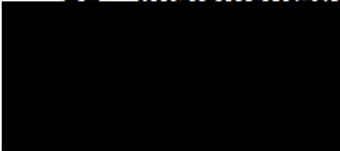
### **B1 – Quality and Performance**

### **B2 – Governance**

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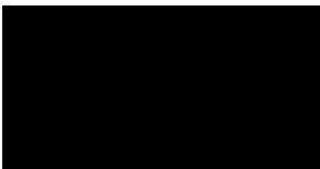


### **C2 – Implementation Plan**



### **C3 – Exit**

### **C4 – Security ISQ**



### **F1 – Tackling Economic Inequality**

### **F2 – Equal Opportunity**



## Schedule 5 (Commercially Sensitive Information)

1. The Buyer acknowledges that the Supplier has requested that the following information be treated as Commercially Sensitive Information. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column “**Duration of Confidentiality**”):

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.	Duration of Confidentiality
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] for 5 years.
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	3 Years

2. The Supplier acknowledges that circumstances may arise that require disclosure and are outside the control of the Buyer, for example, due to a legal requirement including a court order.
3. The Buyer will consult with the Supplier on any request for information, identified as Commercially Sensitive, under the FOIA.
4. The Buyer reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA or Clause 20 (When you can share information).
5. The Buyer will publish without prior consent from the Supplier all information provided by the Supplier **not** identified in this Schedule 5 as constituting Commercially Sensitive Information under the Buyer’s transparency reporting requirements provided that such disclosure satisfies the requirements of the FOIA.
6. The Buyer reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior



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to publication.

## Schedule 6 (Reporting and Transparency)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## 2. General

- 2.1 The Supplier shall work with the Buyer to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered as specified.
- 2.2 The Supplier shall work with the Buyer to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Supplier's management and delivery of it.
- 2.3 The Supplier shall supply information requested relevant to the delivery of the Services to the Buyer, using formats and to timescales specified by the Buyer in this Schedule.
- 2.4 The Buyer reserves the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.
- 2.5 Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.

- 2.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule.
- 2.7 Review meetings between the Buyer and the Supplier shall also cover, as appropriate, dispute resolution and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the Supplier Staff involved in managing the relationship identified and suitably empowered.

### 3. Access

- 3.1 In all instances, the Supplier shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring in relation to the Contract.

### 4. Health and Safety Responsibilities of the Buyer's Representatives

- 4.1 The Buyer's representatives may visit the Supplier and its Subcontractors for a variety of reasons. In the course of their normal duties such representatives of the Buyer may make recommendations in relation to the monitoring of health and safety requirements. In doing this the Buyer's representative shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not, which shall remain the responsibility of the Supplier. Instead, they shall approach this from the position of any lay person. If, however, the Buyer's representative does notice something on which they require assurance or clarification, they shall raise this with the Supplier or the Subcontractor's representative at the location where they are visiting. In no event are the Buyer's Representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Supplier or its Subcontractors or any omission to give such advice, comments or otherwise.

### 5. DWP Specific Management Information

- 5.1 The Supplier shall supply information listed below relevant to the delivery of the Services to the Buyer, using formats and to timescales as specified. This includes but is not limited to:

Supplier Information Required	Frequency or Date Required by
Sustainable Development Policy Statement & Sustainable Development Plan	Within six (6) Months of the Commencement Date and at least annually thereafter.
HMG Baseline Personnel Security Standard - Supplier's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Suppliers	Within four (4) weeks of the Commencement Date and submitted for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31 <sup>st</sup> January for year ending 31 <sup>st</sup> December)



## Schedule 8 (Implementation Plan and Testing)

### Part A – Implementation

#### 1. Definitions

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

<b>"Delay"</b>	(a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Deliverable Item"</b>	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
<b>"Implementation Period"</b>	has the meaning given to it in Paragraph 6.1;

#### 2. Agreeing And Following The Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 5 days after the Effective Date.
- 2.2 The draft Implementation Plan:
- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
  - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date (as appropriate).
- 2.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

#### 3. Reviewing and Changing The Implementation Plan

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

- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestone shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a Material Default.

#### **4. Security Requirements Before The Start Date**

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

#### **5. What To Do If There Is A Delay**

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
  - 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
  - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
  - 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
  - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## 6. Implementation Plan

- 6.1 The Implementation Period will be [REDACTED]
- 6.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.
- 6.3 In accordance with the Implementation Plan, the Supplier shall:
  - 6.3.1 work cooperatively and in partnership with the Buyer to understand the scope of Services to ensure a mutually beneficial handover of the Services;
  - 6.3.2 work with the Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
  - 6.3.3 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 6.4 The Implementation Plan will include detail stating:
  - 6.4.1 how the Supplier will work the Buyer Authorised Representative to capture and load up information such as asset data; and
  - 6.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 6.5 In addition, the Supplier shall:
  - 6.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
  - 6.5.2 mobilise all the Services specified in the Specification within this Contract;
  - 6.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
    - (a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
    - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute

shall be resolved in accordance with the Dispute Resolution Procedure.

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



## **Annex 1: Implementation Plan**

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



## Schedule 10 (Service Levels)

### 1. Definitions

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

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

### 2. What happens if you don't meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
- 2.4.2 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;

- (c) results in the corruption or loss of any Government Data; and/or
  - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.4.3 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).
- 2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
  - 2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
  - 2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
  - 2.5.3 there is no change to the Service Credit Cap.

### 3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

- 3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"), provided that the operation of this Paragraph 0 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for Material Default.

**Part A: Service Levels and Service Credits****1. Service Levels**

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Level Failure to occur,  
the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:
  - 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
  - 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
  - 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or
  - 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 shall apply).

**2. Service Credits**

- 2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

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

Ref	Performance Measure	%	Service Credit Applicable	Service Credit to Apply	Published KPI
<b>SLA1</b>	<b>DNA Testing Result Production</b> In 95% of cases, DNA test results produced within 2 Clear Working Days of the receipt of the last usable sample for each case.  <i>*usable defined as a sample without any faults or administrative queries, any exception to be agreed by the Buyer.</i>	95%	No	N/A	No
<b>SLA2</b>	<b>DNA Testing Result Production</b> In 100% of cases, DNA test results produced within 5 Clear Working Days of the receipt of the last usable* sample for each case.  <i>*usable defined as a sample without any faults or administrative queries, any exception to be agreed by the Buyer.</i>	100%	Yes	Supplier will not be entitled to invoice the Buyer in respect of any of the relevant Charges, or for the avoidance of doubt, any other sums.  Where the Supplier has received payment from the RP, PP, or a person acting on their behalf, in advance of the DNA Test taking place, the Supplier shall reimburse all relevant Charges for the DNA Test to the Buyer or the same person who paid the DNA Test Charges, as directed by the Buyer, within 10 working days of notifying the Buyer of the failure of SLA2.	No
<b>SLA3</b>	<b>Contact with PP</b> Letters to be issued to the PP within 2 days of receipt of the referral and where appropriate telephone contact to be made with PP 4 days later, three attempts over three days required.	100%	Yes	For cases referred by the Authority which do not Meet Service Level SLA3, the Contractor will not be entitled to invoice the Authority in respect of any of the relevant Charges, or for the avoidance of doubt, any other sums.	No

<b>SLA4</b>	<b>Secure Data &amp; Incident Management</b> Data sent to DWP, PP and RP must be secure and relate to the individual case only, where a security breach has occurred, an incident report must be sent to DWP within 24 hours of it being discovered.	100%	Yes	1% of the gross monthly invoice in the month the security incident occurred.	No
<b>SLA5</b>	<b>Process Pauses</b> Pause in the process, as stated in the requirements to be reported to DWP in writing within 24 hours.	100%	No	N/A	No
<b>SLA6</b>	<b>Contact With RP</b> Once payment of the test is confirmed, 3 telephone calls to be attempted over 2 days to the RP to arrange the sample appointment	100%	No	N/A	No
<b>SLA7</b>	<b>Sample Kits Issued</b> 100% of sample kits to be issued to the nominated DNA sampler within 24 hours of the DNA TP being informed of where the test is to be taken.	100%	No	N/A	No
<b>SLA8</b>	<b>Complaints</b> Supplier to investigate and resolve any complaints within 7 working days of receipt and notify DWP and other relevant parties complaint outcome within 7 working days.	100%	No	N/A	No
<b>SLA9</b>	<b>Case Management System</b> Supplier must ensure their case management system is available between working hours, as outlined in the SoR.	100%	No	N/A	No
<b>SLA10</b>	<b>Monthly Reporting</b> Monthly reports and invoicing produced within 7 working days of the previous month.	100%	No	N/A	No

## Part B: Performance Monitoring

### 1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 1.2.3 details of any Critical Service Level Failures;
  - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
  - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the

Supplier and the calculations of the amount of Service Credits for any specified Service Period.

## **2. Satisfaction Surveys**

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



## Schedule 14 (Business Continuity and Disaster Recovery)

### 1. Definitions

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

"BCDR Plan"	has the meaning given to it in Paragraph 0 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 0 of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 0 of this Schedule;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph 0 of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph 0 of this Schedule,

### 2. BCDR Plan

- 2.1 At least forty (40) Working Days after the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
  - 2.1.2 the recovery of the Deliverables in the event of a Disaster.
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.2.2. Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
  - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **3. General Principles of the BCDR Plan (Section 1)**

- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
    - (c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
    - (d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
    - (e) a business impact analysis of different anticipated failures or disruptions;
  - 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
  - 3.1.9 identify the procedures for reverting to "normal service";
  - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
  - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and

- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any Default by the Supplier of this Contract.

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

## **5. Disaster Recovery (Section 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
  - 5.2.1 loss of access to the Buyer Premises;
  - 5.2.2 loss of utilities to the Buyer Premises;
  - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
  - 5.2.4 loss of a Subcontractor;
  - 5.2.5 emergency notification and escalation process;
  - 5.2.6 contact lists;
  - 5.2.7 staff training and awareness;
  - 5.2.8 BCDR Plan testing;
  - 5.2.9 post implementation review process;
  - 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
  - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
  - 5.2.13 testing and management arrangements.

## **6. Review and changing the BCDR Plan**

- 6.1 The Supplier shall review the BCDR Plan:
  - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 0; and
  - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 0 and 0 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for

any costs that it may incur above any estimate without the Buyer's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 0 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## 7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables;
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.

- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## **8. Invoking the BCDR Plan**

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

## **9. Circumstances beyond your control**

The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

## Schedule 16 (Security)

### General

The Supplier shall, and shall procure that any Subcontractor (as applicable) shall, comply with the Buyer's security requirements as set out in the Contract which include the requirements set out in this Schedule 16 to the Contract. The Buyer's security requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Buyer Assets, the Buyer System and the Supplier System.

Terms used in this Schedule 16 which are not defined below shall have the meanings given to them in Schedule 1 (Definitions) of the Contract.

### 1. Definitions

1.1 In this Schedule 16, the following definitions shall apply:

<b>"Buyer Personnel"</b>	shall mean all persons employed by the Buyer including directors, officers, employees together with the Buyer's servants, agents, consultants, contractors and suppliers but excluding the Supplier and any Subcontractor (as applicable).
<b>"Availability Test"</b>	shall mean the activities performed by the Supplier to confirm the availability of any or all components of any relevant ICT system as specified by the Buyer.
<b>"Breach of Security"</b>	shall mean an event that results, or could result, in: <ul style="list-style-type: none"> <li>(a) any unauthorised access to or use of the Buyer Data, the Services and/or the Information Management System; and/or</li> <li>(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.</li> </ul>
<b>"Certification Requirements"</b>	means the certification requirements set out in paragraphs 3.1 and 4.1 and.
<b>"CHECK"</b>	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.

<b>“Cloud”</b>	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
<b>“Cyber Essentials Plus”</b>	shall mean the Government-backed, industry-supported scheme managed by the NCSC with higher level of security requirements to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>“Cyber Security Information Sharing Partnership” or “CiSP”</b>	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>“Good Security Practice”</b>	<p>shall mean:</p> <ul style="list-style-type: none"><li>(a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);</li><li>(b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and</li><li>(c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.</li></ul>



**“Information Management System”**

shall mean:

- (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Subcontractors will use to provide the parts of the Services that require Processing Buyer Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources).

**“Information Security”**

shall mean:

- (a) the protection and preservation of:
- (b) the confidentiality, integrity and availability of any Buyer Assets, the Buyer System (or any part thereof) and the Supplier System (or any part thereof);
- (c) related properties of information including, but not limited to, authenticity, accountability, and non-repudiation; and
- (d) compliance with all Law applicable to the processing, transmission, storage and disposal of Buyer Assets.

**“Information Security Manager”**

shall mean the person appointed by the Supplier with the appropriate experience, authority and expertise to ensure that the Supplier complies with the Buyer’s Security Requirements.

**“Information Security Management System (“ISMS”)”**

shall mean the set of policies, processes and systems designed, implemented and maintained by the Supplier to manage Information Security Risk as certified by ISO/IEC 27001.

**“Information Security Questionnaire”**

shall mean the Buyer’s set of questions used to audit and on an ongoing basis assure the Supplier’s compliance with the Buyer’s Security Requirements.

**“Information Security Risk”**

shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.

**“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301**

shall mean:

- (a) ISO/IEC 27001;
- (b) ISO/IEC 27002/IEC; and
- (c) ISO 22301,

in each case as most recently published by the International Organization for Standardization or its successor entity (the “**ISO**”) or the relevant successor or replacement information security standard which is formally recommended by the ISO.

**“NCSC”**

shall mean the National Cyber Security Centre or its successor entity (where applicable).

**“Penetration Test”**

shall mean a simulated attack on any Buyer Assets, the Buyer System (or any part thereof) or the Supplier System (or any part thereof).

**“PCI DSS”**

shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the “**PCI**”).

**“Risk Profile”**

shall mean a description of any set of risks. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.

**“Security Policies”**

means the policies set out in Annex A.

**“Security Test”**

shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.

**“Security Standards”**

means the standards set out in Annex B.

<b>“Tigerscheme”</b>	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
<b>“Vulnerability Scan”</b>	shall mean an ongoing activity to identify any potential vulnerability in any Buyer Assets, the Buyer System (or any part thereof) or the Supplier System (or any part thereof).

- 1.2 Reference to any notice to be provided by the Supplier to the Buyer shall be construed as a notice to be provided by the Supplier to the Buyer's Representative.
- 1.3 The content of this Schedule 16, together with any such additional security requirements set out in Schedule 2 (*Services Description*) shall constitute the **“Security Requirements”**.

## **2. Principles Of Security**

- 2.1 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:
  - 2.1.1 the Sites;
  - 2.1.2 the IT Environment;
  - 2.1.3 the Information Management System; and
  - 2.1.4 the Services.
- 2.2 The Supplier acknowledges and agrees that Buyer relies upon the Supplier providing all accurate, adequate, and appropriate information in respect of the Services. Where the Supplier considers information relevant to the security of the Services it shall promptly notify the Buyer of such information. 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 is and shall remain liable for:
  - 2.2.1 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 Subcontractors; and
  - 2.2.2 the security of the Information Management System.
- 2.3 The Supplier shall:
  - 2.3.1 comply with the Security Requirements; and

- 2.3.2 ensure that each Subcontractor that Processes Buyer Data complies with the applicable Security Requirements as notified to the Supplier by the Buyer from time to time; and
  - 2.3.3 comply with the Security Requirements and provide a level of security which is in accordance with the Security Policies and Security Standards, Good Security Practice and Law.
- 2.4 The Supplier shall provide the Buyer with access to Supplier Personnel responsible for 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 ten (10) Working Days' written notice..
- 2.5 The Supplier shall:
  - 2.5.1 monitor the delivery of assurance activities;
  - 2.5.2 monitor security risk impacting upon the operation of the Service;
  - 2.5.3 report Breaches of Security in accordance with the Security Incident Management standard as set out in Annex B;
  - 2.5.4 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; and
  - 2.5.5 shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policies and Standards.

### **3. ISO/IEC 27001 Compliance and Audit**

- 3.1 The Supplier shall, and shall procure that any Subcontractor (as applicable) shall comply with ISO/IEC 27001 (the "**ISO Certificate**") in relation to the Services during the Term.
- 3.2 The Supplier shall appoint an Information Security Manager.
- 3.3 The Supplier shall notify the Buyer of the identity of the Information Security Manager on the Commencement Date and, where applicable, within five (5) Working Days following any change in the identity of the Information Security Manager.
- 3.4 The Supplier shall ensure that it operates and maintains the ISMS during the Term and that the ISMS meets the Security Policies and Security Standards, Good Security Practice and Law and includes:
  - 3.4.1 a scope statement (which covers all of the Services provided under this Contract);
  - 3.4.2 a risk assessment (which shall include any risks specific to the Services);

- 3.4.3 a statement of applicability;
- 3.4.4 a risk treatment plan; and
- 3.4.5 an incident management plan,  
in each case as specified by ISO/IEC 27001.
- 3.5 The Supplier shall provide the ISMS to the Buyer upon request within 10 Working Days from such request.
- 3.6 The Supplier shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within ten (10) Working Days after completion of the relevant audit provide any associated security audit reports to the Buyer.
- 3.7 Notwithstanding the provisions of paragraph 3.1 to paragraph 4.1, the Buyer may, in its absolute discretion, notify the Supplier that it is not in compliance with the Buyer's Security Requirements and provide details of such non-compliance. The Supplier shall, at its own expense, undertake those actions required in order to comply with the Buyer's Security Requirements within one (1) calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Buyer's Security Requirements within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a Notifiable Default entitling the Buyer to terminate the Contract in accordance with Clause 14.4.1(c).

#### **4. Cyber Essentials Plus Scheme**

- 4.1 The Supplier shall, and shall procure that any Subcontractor (as applicable) shall, obtain and maintain certification to Cyber Essentials Plus (the "Cyber Essentials Plus Certificate") in relation to the Services during Contract Period. The Cyber Essentials Plus Certificate shall be provided by the Supplier to the Buyer annually on the dates as agreed by the Parties.
- 4.2 The Supplier shall notify the Buyer of any failure to obtain, or the revocation of, a Cyber Essentials Plus Certificate within two (2) Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Plus Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Plus Certificate during the Term after the first date on which the Supplier was required to provide a Cyber Essentials Plus Certificate in accordance with paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a Notifiable Default entitling the Buyer to terminate the Contract in accordance with Clause 14.4.1(c).
- 4.3 In the event that the Supplier ceases to be compliant with the requirements of this Schedule 16, the Buyer may at its absolute discretion direct the Supplier to:
  - 4.3.1 cease using the Buyer Data; and/or

- 4.3.2 promptly return, destroy, and/or erase the Buyer Data in accordance with the Security Requirements; and/or
- 4.3.3 collaborate and/or follow the reasonable instructions of the Buyer in respect of achieving compliance with the Security Requirements,

(together the “**Non-Compliance Instructions**”) and the Supplier shall and/or shall procure that the relevant Subcontractor shall promptly comply with such Non-Compliance Instructions.

## 5. Risk Management

- 5.1 The Supplier shall create, operate, and maintain policies and processes for risk management (the **Risk Management Policy**) during the Term. Such Risk Management Policy shall include standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the Buyer’s Security Requirements are met (the **Risk Assessment**). The Supplier shall provide the Risk Management Policy to the Buyer upon request within ten (10) Working Days of such request. The Buyer may, at its absolute discretion, require the Supplier to make changes to the Risk Management Policy to comply with the Buyer’s Security Requirements. The Supplier shall, at its own expense, promptly undertake those actions required to implement the changes to the Risk Management Policy required by the Buyer and to effect such changes in its delivery of the Services (and in any event within one (1) calendar month of such request or on such other date as agreed by the Parties).
- 5.2 The Supplier shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Supplier System or in the threat landscape or (iii) at the request of the Buyer. The Supplier shall provide the report of the Risk Assessment to the Buyer, in the case of at least annual Risk Assessments, within five (5) Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one (1) calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Supplier shall notify the Buyer within five (5) Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Buyer decides, at its absolute discretion, that any Risk Assessment does not meet the Buyer’s Security Requirements, the Supplier shall repeat the Risk Assessment within one (1) calendar month of such request or as agreed by the Parties.
- 5.4 The Supplier shall, and shall procure that any Subcontractor (as applicable) shall, co-operate with the Buyer in relation to the Buyer’s own risk management processes regarding the Services.
- 5.5 For the avoidance of doubt, the Supplier shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 5. Any failure by the Supplier to comply with any requirement of this paragraph 5 (regardless of whether such failure is capable of remedy),

shall constitute a Notifiable Default entitling the Buyer to terminate the Contract in accordance with Clause 14.4.1(c).

- 5.6 The Supplier shall promptly notify the Buyer (and in any event, within two (2) Working Days or such other timescale as stipulated in the Security Standards and Security Policies) after becoming aware of:
- 5.6.1 a significant change to the components or architecture of the Information Management System and/or the ISMS;
  - 5.6.2 a new risk to the components or architecture of the Information Management System and/or the ISMS;
  - 5.6.3 a vulnerability to the components or architecture of the Service;
  - 5.6.4 a change in the threat profile;
  - 5.6.5 a significant change to any risk component;
  - 5.6.6 a significant change in the quantity of Personal Data held within the Service;
  - 5.6.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
  - 5.6.8 an ISO27001 audit report produced in connection with the Certification Requirements indicating significant concerns.
- 5.7 Where the Supplier is required to implement a change, including any change to the ISMS, the Supplier shall effect such change at its own cost and expense.

## **6. Security Audit and Assurance**

- 6.1 The Supplier must ensure that its Implementation Plan aligns with its Information Security Questionnaire response and sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Subcontractors, from the first Operational Services Commencement Date.
- 6.2 The Supplier shall, and shall procure that any Sub-Contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Buyer (the “**Information Security Questionnaire**”) at least annually. The Supplier shall provide the completed Information Security Questionnaire to the Buyer within one calendar month from the date of request.
- 6.3 The Buyer may, at its sole discretion, prevent the Supplier from using the Information Management System to Process Buyer Data if:
- 6.3.1 the Supplier has not completed the Information Security Questionnaire prior to the Effective Date and/or in accordance with Paragraph 6.2 above; or

- 6.3.2 the Supplier has completed the Information Security Questionnaire but has failed to evidence (in the Buyer's opinion) that it does, and/or will in its performance of the Services, meet the Security Requirements,

until such time that the Supplier has committed in writing to any rectification processes the Buyer deems necessary (at the Buyer's absolute discretion), and, if required by the Buyer, implemented such rectification processes. The exercise of the Buyer of its rights under this Paragraph 6.3 shall not constitute a Buyer Cause and shall not relieve the Supplier of its liability for Delay Payments which accrue.

- 6.4 The Supplier shall conduct Security Tests to assess the Information Security of the Supplier System and, if requested, the Buyer System. In relation to such Security Tests, the Supplier shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Tests shall be carried out:

- 6.4.1 at least annually;

- 6.4.2 in the event of a material change in the Supplier System or in the Buyer's System Environment; and

- 6.4.3 at the request of the Buyer which request may include, but is not limited to, a repeat of a previous Security Test, and

the content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Buyer.

- 6.5 The Supplier shall promptly provide a report of such Security Tests within one (1) calendar month (or within such other timeframe as directed by the Buyer) following the completion of such Security Test. The Supplier shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Buyer in its absolute discretion.
- 6.6 The Buyer shall be entitled to send the Buyer's Representative to witness the conduct of any Security Test. The Supplier shall provide to the Buyer notice of any Security Test at least one (1) month prior to the relevant Security Test.
- 6.7 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 date, timing, content and conduct of such tests shall be agreed in advance with the Buyer.
- 6.8 Where the Supplier provides code development services to the Buyer, the Supplier shall comply with the Buyer's Security Requirements in respect of code development within the Supplier System and the Buyer System.



- 6.9 Where the Supplier provides software development services, the Supplier shall comply with the code development practices specified in the Specification or in the Buyer's Security Requirements.
- 6.10 The Buyer, or an agent appointed by it, may undertake Security Tests in respect of the Supplier System, and from time to time may require the Supplier to undertake further Security Tests, after providing advance notice to the Supplier. If any Security Test identifies any non-compliance with the Buyer's Security Requirements, the Supplier shall, at its own expense and in accordance with the Security Standards and the Policies, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Buyer at its absolute discretion. The Supplier shall provide all such co-operation and assistance in relation to any Security Test conducted by the Buyer as the Buyer may reasonably require.
- 6.11 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate an identified vulnerability within the timescales set out in the Security Policies and Security Standards, or as otherwise agreed with, or directed by, the Buyer.
- 6.12 The Buyer shall schedule regular security governance review meetings which the Supplier shall, and shall procure that any Subcontractor (as applicable) shall, attend.

## **7. PCI DSS Compliance and Certification**

- 7.1 Where the Supplier obtains, stores, processes or transmits payment card data, the Supplier shall comply with the PCI DSS.
- 7.2 The Supplier shall obtain and maintain up-to-date attestation of compliance certificates ("**AoC**") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("**SAQ**") completed provided by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the Term. The Supplier shall provide the respective PCI Reports to the Buyer upon request within ten (10) Working Days of such request.
- 7.3 The Supplier shall notify the Buyer of any failure to obtain a PCI Report or a revocation of a PCI Report within two (2) Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

## **8. Security Policies and Security Standards**

- 8.1 The Supplier shall, and shall procure that any Subcontractor (as applicable) shall comply with the Security Policies and Security Standards and shall provide evidence of such compliance to the Buyer within one (1) month of request.

- 8.2 Notwithstanding the foregoing, the Buyer's Security Requirements applicable to the Services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. Where any such change constitutes a Contract Change, any change in the Buyer's Security Requirements resulting from such Contract Change (if any) shall be agreed by the Parties in accordance with the Contract Change Procedure. Where any such change constitutes an Operational Change, any change in the Buyer's Security Requirements resulting from such Operational Change (if any) shall be agreed by the Parties and documented in the relevant Operational Change Confirmation.
- 8.3 The Supplier shall, and shall procure that any Subcontractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Security Standards.

**9. Cyber Security Information Sharing Partnership**

- 9.1 The Supplier may require a nominated representative of the Supplier to join the Cyber Security Information Sharing Partnership on behalf of the Supplier during the Term, in which case the Supplier's nominated representative shall participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 If the Supplier elects a nominated representative to join the Cyber Security Information Sharing Partnership in accordance with Paragraph 9.1 above, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Supplier's Risk Management Policy.

## **ANNEX A – Buyer Security Policies**

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

Acceptable Use Policy

Information Security Policy

Physical Security Policy

Information Management Policy

Email Policy

Technical Vulnerability Management Policy

Remote Working Security Policy

Social Media Policy

Forensic Readiness Policy

SMS Text Policy

Privileged Users Security Policy

User Access Control Policy

Security Classification Policy

Cryptographic Key Management Policy

HMG Personnel Security Controls – May 2018

(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)

NCSC Secure Sanitisation of Storage Media (published on

<https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

## **ANNEX B – Security Standards**

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- SS-001 - Part 1 - Access & Authentication Controls
- SS-001 - Part 2 - Privileged User Access Controls
- SS-002 – Public Key Infrastructure & Key Management
- SS-003 - Software Development
- SS-005 - Database Management System
- SS-006 - Security Boundaries
- SS-007 - Use of Cryptography
- SS-008 - Server Operating System
- SS-009 - Hypervisor
- SS-010 - Desktop Operating System
- SS-011 - Containerisation
- SS-012 - Protective Monitoring Standard for External Use
- SS-013 - Firewall Security
- SS-014 - Security Incident Management
- SS-015 - Malware Protection
- SS-016 - Remote Access
- SS-017 - Mobile Devices
- SS-018 - Network Security Design
- SS-019 - Wireless Network
- SS-022 - Voice & Video Communications
- SS-023 - Cloud Computing
- SS-025 - Virtualisation
- SS-027 - Application Security Testing
- SS-028 - Microservices Architecture
- SS-029 - Securely Serving Web Content
- SS-030 - Oracle Database Security
- SS-031 - Domain Management
- SS-033 – Security Patching

## **Schedule 20 (Processing Data)**

### **1. Status of The Controller**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
- 1.1.1 "Controller" in respect of the other Party who is "Processor";
  - 1.1.2 "Processor" in respect of the other Party who is "Controller";
  - 1.1.3 "Independent Controller" of the Personal Data where the other Party is also "Controller",
- in respect of certain Personal Data under a Contract and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

### **2. Where One Party Is Controller and The Other Party Its Processor**

- 2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 2.4.1 process that Personal Data only in accordance with Annex 1 (Processing Personal Data) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
  - 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to

reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures.

2.4.3 ensure that:

- (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Annex 1 (Processing Personal Data));
- (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4 not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
  - (i) where the transfer is subject to UK GDPR:
    - (A) the International Data Transfer Agreement issued by the Information Commissioner

- under S119A(1) of the DPA 2018 (the "**IDTA**"); or
    - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs,
      - as well as any additional measures determined by the Controller being implemented by the importing party;
    - (c) the Data Subject has enforceable rights and effective legal remedies;
    - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.
  - 2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
  - 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;
  - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
  - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 2.5.6 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
  - 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Sub processor to Process any Personal Data related to this Contract, the Processor must:
  - 2.11.1 notify the Controller in writing of the intended Sub processor and Processing;
  - 2.11.2 obtain the written consent of the Controller;



- 2.11.3 enter into a written agreement with the Sub processor which gives effect to the terms set out in this Schedule 20 such that they apply to the Sub processor; and
- 2.11.4 provide the Controller with such information regarding the Sub processor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub processors.
- 2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. 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's Office or any other regulatory authority.

### **3. Independent Controllers of Personal Data**

- 3.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 3.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 3.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 3.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.
- 3.5 The Parties shall only provide Personal Data to each other:
  - 3.5.1 to the extent necessary to perform their respective obligations under this Contract;
  - 3.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
  - 3.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
    - (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable); or
    - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article

46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:

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

3.5.4 where it has recorded it in Annex 1 (Processing Personal Data).

- 3.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with


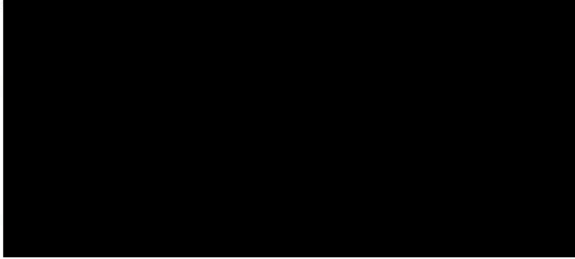
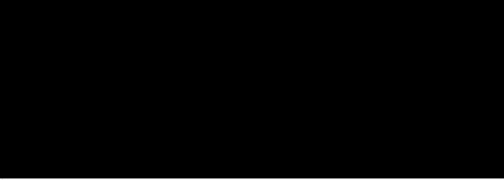
- the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 3.7 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 3.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**Request Recipient**"):
- 3.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 3.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 3.9 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to this Contract and shall:
- 3.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
- 3.9.2 implement any measures necessary to restore the security of any compromised Personal Data;
- 3.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 3.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 3.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (Processing Personal Data).
- 3.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Contract which is specified in Annex 1 (Processing Personal Data).

- 3.12 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.

## Annex 1 - Processing Personal Data

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
  - 1.1 The contact details of the Buyer's Data Protection Officer are [REDACTED]
  - 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
  - 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
  - 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Paragraph 1 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>[REDACTED]</p>
Subject matter of the Processing	The processing is required in order to ensure that the Processor can effectively deliver the contract to provide DNA Parentage Testing and results, including the administration of the process.
Duration of the Processing	During the contract period as described on the Award form and any subsequent extensions.

Description	Details
Nature and purposes of the Processing	 Collection of DNA samples to enable Parentage Testing.
Type of Personal Data being Processed	
Categories of Data Subject	DWP Customers, Resident Parents, Paying Parents and children
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under law to preserve that type of data	As defined in Schedule 2 (Specification), paragraph 5.1 and 5.4
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway	
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	Personal and Sensitive personal data will be handled in compliance with Cellmark's obligations as a Data Processor under the GDPR and associated Data Protection legislation, to ensure ongoing confidentiality, integrity and availability.  Cellmark operates an Information Security Management System (ISMS) and a security policy (IS0137) for the Company's IT environment which is externally audited and certified to ISO27001 and Cyber Essentials Plus.  Cellmark's ISMS and associated policies are designed to: 1. Reduce the risk of a data security breach;

Description	Details
	<ol style="list-style-type: none"><li>2. Protect the confidentiality of company and customer information;</li><li>3. Assure the integrity of company and customer information;</li><li>4. Maintain the availability of the Company's IT environment;</li><li>5. Control and limit access to information to only authorised and authenticated users whose job requires them to have access to it (principle of least privilege).</li></ol>

## Schedule 21 (Variation Procedure)

This form is to be used in order to change a contract in accordance with Clause 28 (Changing the Contract)

### 1 Definitions

In this Schedule, the following definitions shall apply:

<b>“Buyer Change Manager”</b>	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’s Authorised Representative;
<b>“Change Request”</b>	a written request for a Variation which shall be substantially in the form of paragraph 4;
<b>“Change Communication”</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
<b>“Fast-track Change”</b>	any Variation which the Parties agree to expedite in accordance with Paragraph 8;
<b>“Impact Assessment”</b>	an assessment of a Change Request in accordance with Paragraph 5;
<b>“Impact Assessment Estimate”</b>	has the meaning given in Paragraph 4.3;
<b>“Receiving Party”</b>	the Party which receives a proposed Variation; and
<b>“Supplier Change Manager”</b>	the person appointed to that position by the Supplier from time to time and notified in writing to the Buyer or, if no person is notified, the Supplier’s Authorised Representative.

### 3. General Principles of Variation Procedure

- 2.1 This Schedule sets out the procedure for dealing with Variations. Operational Changes shall be processed in accordance with Paragraph 90. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Variation.
- 2.2 The Parties shall deal with Variation as follows:
  - (a) either Party may request a Variation which they shall initiate by issuing a Change Request in accordance with Paragraph 4.1;
  - (b) unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Variation in accordance with Paragraph 5.1 before the Variation can be either approved or implemented;
  - (c) the Buyer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 5.4;
  - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 5.4;



- (e) save as otherwise provided in this Contract, no proposed Variation shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 2.3; and
  - (f) if a proposed Variation is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.3 To the extent that any Variation requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 8 (Implementation Plan and Testing), and, where appropriate, the Change Authorisation Note relating to such a Variation shall specify Milestones and Milestone Date(s) in respect of such Variation for the purposes of such procedures.
- 2.4 Until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6, then:
- (g) 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 Variation did not apply; and
  - (h) any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Variation, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.5 The Supplier shall:
- (i) within 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 Variations agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Variations were agreed; and
  - (j) thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.

### **3 Costs**

#### **3.1 Subject to Paragraph 4:**

- (k) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (l) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Buyer shall not be required to pay any such costs if:
  - (i) such costs [REDACTED]; subject to agreement
  - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (iii) such costs exceed those in the accepted Impact Assessment Estimate.

- 3.2 The cost of any Variation shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 3 (Charges). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Variation requires additional resources and, in any event, any change to the Charges resulting from a Variation (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 required for the provision of the Services as amended by the Variation.

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.

#### 4. Change Request

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of annex 1 and state whether the Party issuing the Change Request considers the proposed Variation to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment in substantially the same form as set out as Annex 2 to the Buyer as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.
- 4.3 If the Buyer issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Buyer.
- 4.4 If the Buyer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. 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:
- (m) The nature of the request for clarification; and
  - (n) The reasonable justification for the request;
- the time period to complete the Impact Assessment shall 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.

#### 5. Impact Assessment

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- (o) details of the proposed Variation including the reason for the Variation; and
  - (p) details of the impact of the proposed Variation on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;
  - (q) any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
    - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
    - (ii) the format of Buyer Data, as set out in the Services Description;
    - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
    - (iv) other services provided by third party contractors to the Buyer, including any changes required by the proposed Variation to the Buyer's IT infrastructure;
  - (r) details of the cost of implementing the proposed Variation;
  - (s) details of the ongoing costs required by the proposed Variation 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;
  - (t) a timetable for the implementation, together with any proposals for the testing of the Variation;
  - (u) details of how the proposed Variation will ensure compliance with any applicable Change in Law; and
  - (v) such other information as the Buyer may reasonably request in (or in response to) the Change Request.
- 5.2 If the Variation involves the processing or transfer of any Personal Data outside the United Kingdom, the preparation of the Impact Assessment shall also be subject to Clause 18 (Data protection).
- 5.3 Subject to the provisions of Paragraph 5.1, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 5.1 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Buyer is the Receiving Party and the Buyer reasonably considers that it requires further information regarding the proposed Variation so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Buyer within 10 Working Days of receiving such notification. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 5.1 until the Buyer is

satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5 The calculation of costs for the purposes of Paragraphs 1(r) and (s) shall:

- (w) include estimated volumes of each type of resource to be employed and the applicable rate card;
- (x) include full disclosure of any assumptions underlying such Impact Assessment;
- (y) include evidence of the cost of any assets required for the Change; and
- (z) include details of any new Sub-Contracts necessary to accomplish the Change.

## **6.0 Buyer's Right of Approval**

6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Buyer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- (aa) approve the proposed Variation, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
- (bb) in its absolute discretion reject the Variation, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any proposed Variation to the extent that the Variation is necessary for the Supplier or the Services to comply with any Changes in Law. If the Buyer does reject a Variation, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (cc) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 6.2, on receiving the modified Change Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Variation within 10 Working Days.

6.2 If the Buyer approves the proposed Variation pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 6.5, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note in a form which it shall sign and deliver to the Buyer for its signature. Following receipt by the Buyer of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Change Authorisation Note shall constitute (or, where the Buyer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.

6.3 If the Buyer does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer does not sign the Change Authorisation Note within 5

Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7. Supplier's Right of Approval**

7.1 Following an Impact Assessment, if:

- (dd) the Supplier reasonably believes that any proposed Variation which is requested by the Buyer would:
  - (i) materially and adversely affect the risks to the health and safety of any person; and/or
  - (ii) require the Services to be performed and/or the Deliverables to be provided in a way that infringes any Law; and/or
- (ee) the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Variation 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 Variation,

then the Supplier shall be entitled to reject the proposed Variation and shall notify the Buyer of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 5.1.

## **8. Fast-Track Changes**

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

If:

- (ff) the total number of Variations in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

both Parties agree the value of the proposed Variation over the remaining Term and any period for which Termination Services may be required does not exceed [REDACTED] and the proposed Variation is not significant (as determined by the Buyer acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4 and 5 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

8.2 The Parties may agree in writing to revise the parameters set out in Paragraph 8.1 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Variation notwithstanding that the total number of Variations to which such procedure is applied will then exceed 4 in a 12 month period.

## **9. Operational Change Procedure**

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the

Supplier without following the Change Control Procedure for proposed Variations provided they do not:

- (gg) have an impact on the business of the Buyer;
  - (hh) require a change to this Contract;
  - (ii) have a direct impact on use of the Services; or
  - (jj) involve the Buyer in paying any additional Charges or other costs.
- 9.2 The Buyer may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier’s Authorised Representative.
- The RFOC shall include the following details:
- (kk) the proposed Operational Change; and
  - (ll) the time-scale for completion of the Operational Change.
- 9.3 The Supplier shall inform the Buyer of any impact on the Services that may arise from the proposed Operational Change.
- 9.4 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Buyer when the Operational Change is completed.

## **10. Communications**

- 10.1 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 29 (*How to communicate about the contract*) shall apply to a Change Communication as if it were a notice.

**Annex 1: Change Request Form**

<b>CR Number</b>	<b>Change Title</b>		
<b>Date Raised</b>		<b>Implementation Date:</b>	
Full Description of Change Request			
Reasons for and Benefits of Change Request			
<p>Any additional changes to this Contract that will be required as a result of the change including any:</p> <ol style="list-style-type: none"> <li>1. Service/Service Levels/Performance Levels</li> <li>2. Format of Buyer Data</li> <li>3. Timetable for the Implementation, including testing</li> <li>4. Amendments to contract wording</li> <li>5. Cost of implementing the change – ongoing/increase/decrease in costs</li> </ol>			
<b>Owner requesting the Change</b>			
Name			
Position		Date	

**Annex 2: Impact Assessment**

(Supplier to Complete)

<b>CR Number</b>	<b>Change Title</b>		
<b>Date Raised</b>		<b>Implementation Date:</b>	
Full Details of the Impact the proposed Variation will have on the services and your ability to meet your other obligations under this Contract:			
<p>Any additional changes to this Contract that will be required as a result of the change including any:</p> <ol style="list-style-type: none"> <li>1. Service/Service Levels/Performance Levels</li> <li>2. Format of Buyer Data</li> <li>3. Timetable for the Implementation, including testing</li> <li>4. Amendments to contract wording</li> <li>5. Cost of implementing the change – ongoing/increase/decrease in costs</li> </ol>			
<b>Impact Assessment Completed by</b>			
Name			
Position		Date	
<b>Impact Assessment Approved/Rejected by Owner</b>			
Name			
Position		Date	
Reason for Rejection			



<b>Impact Assessment Approved/Rejected</b> [REDACTED]			
Name			
Position		Date	
Reason for Rejection			
<b>Impact Assessment Approved/Rejected</b> [REDACTED]			
Name			
Position		Date	
Reason for Rejection			

CR Number:	Contract Change Title:		
Contract		Implementation Date:	
Detailed Description of Agreed Contract Change for which the Impact Assessment has been prepared.			
Details of Agreed adjusted Charges resulting from the Contract Change for which the Impact Assessment has been prepared.			
Amended/New Contract Wording – must include details of Cross Referencing to Original Contract Documents:			
In consideration of the rights and obligations created, granted and assumed by each party to the other party pursuant to this Change Authorisation Note, the parties have agreed to enter into this Change Authorisation Note.			
The provisions of the Contract shall, save as amended in this Change Authorisation Note, continue in full force and effect, and shall be read and construed as one document with this Change Authorisation Note.			
Signed on Behalf of the Buyer		Signed on Behalf of the Supplier	
Signature:		Signature:	

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Name:	Name:
Position:	Position:
Date:	Date:

## **Schedule 22 (Insurance Requirements)**

### **1. The insurance you need to have**

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained until the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.
- 1.4 The Supplier shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 1.5 The Supplier shall effect and maintain with a reputable insurance company a fidelity insurance policy or policies in respect of the loss, theft or misappropriation of moneys up to the sum of [(words/figures)] whilst in the custody or possession of the Supplier, or its Staff.

### **2. How to manage the insurance**

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in this Schedule.
- 5.2 Where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Deliverables and/or this Contract, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## 7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of this Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of [REDACTED] relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- 7.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 15.

## **Annex: Required Insurances**

### **Part A: Third Party Public and Products Liability Insurance**

#### **1. Insured**

The Supplier.

#### **2. Interest**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 0) and arising out of or in connection with the provision of the Deliverables and in connection with this Contract.

#### **3. Limit of indemnity**

3.1 Not less than [REDACTED] respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but [REDACTED] in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

#### **4. Territorial limits**

United Kingdom

#### **5. Period of insurance**

From the date of this Contract for the period of this Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

#### **6. Cover features and extensions**

Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with this Contract and for which the Supplier is legally liable.

#### **7. Principal exclusions**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

## **8. Maximum deductible threshold**

Not to exceed [REDACTED] for each and every third party property damage claim (personal injury claims to be paid in full).



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## **PART B: UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

**Schedule 25 (Rectification Plan)**

Request for Rectification Plan		
Details of the Notifiable Default:	Explain the Notifiable Default, with clear schedule and clause references as appropriate	
Deadline for receiving the Rectification Plan:	[minimum 10 days from request]]	
Signed by Buyer:		Date: <input type="text"/>
Supplier Rectification Plan		
Cause of the Notifiable Default		
Anticipated impact assessment:		
Actual effect of Notifiable Default:		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>
	1.	
	2.	
	3.	
	4.	
Timescale for complete Rectification of Notifiable Default	[X] Working Days	
Steps taken to prevent recurrence of Notifiable Default	<b>Steps</b>	<b>Timescale</b>
	1.	
	2.	
	3.	
	4.	

Signed by the Supplier:		Date:	
<b>Review of Rectification Plan (Buyer)</b>			
Outcome of review	<del>Delete as appropriate</del> Plan Accepted / Plan Rejected / Revised Plan Requested		
Reasons for rejection (if applicable)			
Signed by Buyer		Date:	

## Schedule 26 (Sustainability)

### 1. Definitions

<b>“Modern Slavery Assessment Tool”</b>	means the modern slavery risk identification and management tool which can be found online at: <a href="https://supplierregistration.cabinetoffice.gov.uk/msat">https://supplierregistration.cabinetoffice.gov.uk/msat</a>
<b>“Waste Hierarchy”</b>	“Waste Hierarchy” means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: (a) Prevention; (b) Preparing for re-use; (c) Recycling; (d) Other Recovery; and (e) Disposal.

## Part A

### 1. Public Sector Equality Duty

- 1.1 In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:
  - 1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
  - 1.1.2 advance:
    - (a) equality of opportunity; and
    - (b) good relations,
 between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 2. Employment Law

The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

### 3. Modern Slavery

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
  - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Subcontractors to the Buyer and Modern Slavery Helpline and relevant national or local law enforcement agencies;
- 3.1.12 if the Supplier is in Default under Paragraphs 3.1.1 to 3.1.11 of this Part A of Schedule 26 the Buyer may by notice:
  - (a) require the Supplier to remove from performance of this Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply; and
- 3.1.13 shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).

- 3.2 If the Supplier notifies the Buyer pursuant to Clause 3.1.11 it shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with this Contract.

#### 4. Environmental Requirements

- 4.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2 In performing its obligations under this Contract, the Supplier shall, where applicable to this Contract, to the reasonable satisfaction of the Buyer:
  - 4.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
  - 4.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
  - 4.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above [REDACTED] per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 4.5 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:  
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

#### 5. Supplier Code of Conduct

- 5.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier\\_Code\\_of\\_Conduct\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)  
The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

**6. Reporting**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, [provided that such requests are limited to two (2) per requirement per Contract Year.

**Table A**

<b>Sustainability Report Name</b>	<b>Content of Report</b>	<b>Frequency of Report</b>
<b>Sustainability - General</b>	As proportionate and relevant to this Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Deliverables of climate change, including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks]	On the anniversary of the Effective Date

**Part B – NOT USED****Part C****1. Social Value**

1.1 The Supplier shall provide a Social Value Report to the Buyer as outlined in Table A.

**Table A: Social Value Report**

<b>Required Detail</b>	<b>Frequency</b>
A high-level summary of the Supplier's performance against the Social Value priorities over the relevant period	Annually
Performance by the Supplier against each of the Social Value KPIs set out at Table B over the relevant period	Annually

**Table B: Social Value KPIs – Subject to further agreement**

<b>No.</b>	<b>Social Value Title</b>	<b>Description of Deliverable</b>	<b>Target</b>	<b>Frequency of Measurement</b>	<b>Publishable Performance Information</b>
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Social Value <b>KPI-1</b>	Tackling Economic Inequality	Ensure that there is equality in the opportunities made available for training, progression and recognition.		Annually	Number of <ul style="list-style-type: none"> <li>• progressions</li> <li>• promotions</li> <li>• transfers</li> <li>• training modules attended</li> </ul>
Social Value <b>KPI-2</b>	Equal Opportunity	Report on activities undertaken within the Company to promote Equality and Diversity.		Annually	Number of EDI activities and EDI articles published on the company's intranet.



## Schedule 30 (Exit Management)

### 1. Definitions

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

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 0 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier in connection with the Deliverables but which are also used by the Supplier for other purposes;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 0 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 0 of this Schedule; and
<b>"Virtual Library"</b>	the data repository hosted by the Supplier containing the accurate information about this Contract and the Deliverables in accordance with Paragraph 6.1.5 and 8.2 of this Schedule.

### 2. Supplier Must Always Be Prepared For Contract Exit

2.1 Each Party shall appoint an Exit Manager within three (3) Months of the Effective Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### 3. Assisting Re-Competition For Deliverables

3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender

and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").

- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

#### **4. Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 0 of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 0, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
  - 4.3.1 how the Exit Information is obtained;
  - 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
  - 4.3.3 the management structure to be employed during the Termination Assistance Period;
  - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);

- 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
  - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 0 below) together with a capped estimate of such charges;
  - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (Charges). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.
- 4.5 The Supplier shall:
- 4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than
    - every 12 months throughout the Contract Period;
    - (a) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
    - (b) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
    - (c) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and

- 4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 0 or 0 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.7 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
  - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
  - 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 0, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## 6. Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
  - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to

- facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4 subject to Paragraph 0, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 0 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7. Obligations When The Contract is Terminated**

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
  - 7.2.1 cease to use the Government Data;
  - 7.2.2 vacate any Buyer Premises;
  - 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
  - 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
    - (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
    - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the

reasonable costs of the Supplier actually incurred in responding to such requests for access.

- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.

## 8. Assets, Sub-contracts and Software

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
  - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
  - 8.2.2 which, if any, of:
    - the Exclusive Assets that are not Transferable Assets; and
    - the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and
  - 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
  - 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
  - 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 0 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 0 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

## 9. No Charges

Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

## **10.Dividing the Bills**

All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1 the amounts shall be annualised and divided by three hundred and sixty five (365) to reach a daily rate;
- 10.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.



## **Annex 1: Scope of Termination Assistance**

### **1. Scope of Termination Assistance**

- 1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
  - 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - 1.1.3 providing details of work volumes and staffing requirements over the twelve (12) Months immediately prior to the commencement of Termination Assistance;
  - 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of twelve (12) Months after the Termination Assistance Period;
  - 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
  - 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
  - 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
  - 1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;
  - 1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
  - 1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
  - 1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:
    - (a) to information and documentation relating to the Deliverables that is in the possession or control of the

Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;

#### 1.1.12 knowledge transfer services, including:

- (a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
- (b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
- (c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- (d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- (e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions, and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

#### 1.2 The Supplier will:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 0 for agreement by the Buyer at the time of termination or expiry of this Contract; and

- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 0, providing skills and expertise of a suitable standard.
- 1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.
- 1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 0 shall include:
  - 1.4.1 copies of up-to-date procedures and operations manuals;
  - 1.4.2 product information;
  - 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and
  - 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,and such information shall be updated by the Supplier at the end of the Termination Assistance Period.
- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
  - 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:
    - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and
  - 1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## Schedule 38 (Dispute Resolution)

### 1. Definitions

In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given in paragraph 7.2;
<b>“Dispute Notice”</b>	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>“Expert”</b>	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 to act as an expert in relation to that Dispute;
<b>“Expert Determination”</b>	determination by an Expert in accordance with paragraph 6;
<b>“Mediation Notice”</b>	has the meaning given in paragraph 4.2;
<b>“Mediator”</b>	the independent third party appointed in accordance with paragraph 5.2 to mediate a Dispute;
<b>“Multi-Party Dispute”</b>	a Dispute which involves the Parties and one or more Related Third Parties;
<b>“Multi-Party Dispute Representatives”</b>	has the meaning given in paragraph 9.6;
<b>“Multi-Party Dispute Resolution Board”</b>	has the meaning given in paragraph 9.6;
<b>“Multi-Party Procedure Initiation Notice”</b>	has the meaning given in paragraph 9.2;
<b>“Related Third Party”</b>	a party to: another Contract with the Buyer or the Supplier which is relevant to this Contract; or a Sub-Contract; and
<b>“Supplier Request”</b>	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-Dispute Resolution Procedure in respect of that Dispute.

## **2. Dispute Notices**

2.1 If a Dispute arises then:

- (a) the Buyer Authorised Representative and the Supplier Authorised Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
  - (i) the material particulars of the Dispute;
  - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Buyer) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Buyer it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with Clause 40 (Which law applies)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.
- 2.6 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 8 (*Urgent Relief*).

### **3. Expedited Dispute Timetable**

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 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:
- in paragraph 4.2(c), ten (10) Working Days;
- (a) in paragraph 5.2, ten (10) Working Days;
- (b) in paragraph 6.2, five (5) Working Days; and
- (c) in paragraph 7.2, 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 2 Working Days after the deadline has passed, the Buyer may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. 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. Commercial Negotiation**

Following the service of a Dispute Notice, then, so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute,

the Buyer and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Buyer's Category Manager and the Supplier's Managing Director.

4.1 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "Mediation Notice").

## 5. Mediation

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## 6. Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the

other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
  - (i) an appropriate body agreed between the Parties; or
  - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his 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;
- (d) 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;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.



## 7. Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of paragraph 6, the Buyer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Buyer of its intentions and the Buyer shall have 15 Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Buyer serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 7.5 shall apply; or
  - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Buyer does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 7.5(e), (f) and (g));
  - (b) the arbitration shall be administered by the LCIA;
  - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (e) the seat of the arbitration shall be London.

## 8. Urgent Relief

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- (a) for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
  - (b) where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## 9. Multi-Party Disputes

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Buyer reasonably considers that the matters giving rise to the Dispute 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**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, 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 may serve a Supplier Request on the Buyer.
- 9.4 The Buyer shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Buyer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) 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 3 to 8.
- 9.5 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.

- 9.6 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:
- (a) the Buyer;
  - (b) the Supplier;
  - (c) each Related Third Party involved in the Multi-Party Dispute; and
  - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Buyer considers necessary,
- (together **"Multi-Party Dispute Representatives"**).
- 9.7 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:
- (a) 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;
  - (b) 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 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
  - (c) 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.
- 9.8 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:
- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;
  - (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or

- (c) subject to paragraph 9.9, paragraph 7 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.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Buyer or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.