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**RM6100 Technology Services 3
Framework Schedule 4 Annex 1
Lot 4 Order Form**

Order Form

This Order Form is issued in accordance with the provisions of the Technology Services 3 Framework Contract RM6100 dated 14/06/2021 between the Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Contract**") and should be used by Buyers conducting a further competition under the Framework Contract.

The Contract, referred to throughout this Order Form, means the contract between the Supplier and the Buyer (as defined below) (entered into pursuant to the terms of the Framework Contract) consisting of this Order Form and the Call Off Terms. The Call Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Contract and copies of which are available from the Crown Commercial Service website [<http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1234>]. The agreed Call Off Terms for the Contract being set out as the Annex 1 to this Order Form.

The Supplier shall provide the Services and/or Goods specified in this Order Form (including any attachments to this Order Form) to the Buyer on and subject to the terms of the Contract for the duration of the Term.

In this Order Form, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Call-Off Terms.

This Order Form shall comprise:

1. This document headed "Order Form";
2. The following Attachments with reference to the corresponding Schedule in the Call-Off Terms. Attachments to this Order Form either replaces (i) an Annex to a Schedule in the Call-Off Terms or (ii) a Schedule to the Call-Off Terms in its entirety (for example, Attachment 2.1 (Services Description)):

Attachment to the Order Form	Schedule to the Call-Off Terms
Attachment 2.1 (Services Description)	See Schedule 2.1 (Services Description)
Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators Tables)	See Schedule 2.2 (Performance Levels)
Attachment 2.3 (Environmental Requirements)	See Schedule 2.3 (Standards)
Attachment 2.4 (Information Management System)	See Schedule 2.4 (Security Management)
Attachment 3 (Buyer Responsibilities)	See Schedule 3 (Buyer Responsibilities)
Attachment 4.1 (Supplier Solution)	See Schedule 4.1 (Supplier Solution)
Attachment 4.2 (Commercially Sensitive Information)	See Schedule 4.2 (Commercially Sensitive Information)
Attachment 4.3 (Key Sub-Contractors)	See Schedule 4.3 (Key Sub-Contractors)
Attachment 4.4 (Third Party Contracts)	See Schedule 4.4 (Third Party Contracts)

RM6100 Order Form – Lot 4

Attachment 5 (Software)	See Schedule 5 (Software)
Attachment 6.1 (Outline Implementation Plan)	See Schedule 6.1 (Implementation Plan)
Attachment 6.2 (Test Success Criteria)	See Schedule 6.2 (Testing Procedures)
Attachment 7.1 (Charges)	See Schedule 7.1 (Charges and Invoicing)
Attachment 7.2 (Maximum Payments on Termination)	See Schedule 7.2 (Payments on Termination)
Attachment 7.3 (Approved Benchmarkers)	See Schedule 7.3 (Benchmarking)
Attachment 7.3 (Financial Distress)	See Schedule 7.4 (Financial Distress)
Attachment 7.6 (Anticipated Savings)	See Schedule 7.6 (Anticipated Savings)
Attachment 8.1 (Representation and Structure of Boards)	See Schedule 8.1 (Governance)
Attachment 8.4 (Transparency Reports and Records to Upload to Virtual Library)	See Schedule 8.4 (Reports and Records Provision)
Attachment 9.1 (Notified Sub-Contractors)	See Schedule 9.1 (Staff Transfer)
Attachment 9.2 (Key Personnel)	See Schedule 9.2 (Key Personnel)
Attachment 11 (Processing Personal Data)	See Schedule 11 (Processing Personal Data)

- a. Annex 1 – Lot 4 Call Off Terms
- b. Annex 2 – HMRC Mandatory Clauses

The Order of Precedence shall be as set out in Clause 1.4 of the Call-Off Terms being:

- (a) the Framework, except Framework Schedule 18 (Tender);
- (b) the Order Form and its Attachments (other than Attachment 4.1 (Supplier Solution) and its Annexes) and Schedule 2.2 (Performance Levels) and its Annexes;
- (c) the Call-Off Terms (including the Schedules and their Annexes) (other than Schedule 2.2 (Performance Levels) and its Annexes which is dealt with above in (b));
- (d) Attachment 4.1 (*Supplier Solution*) and its Annexes (if any); and (e)

Framework Schedule 18 (Tender).

Section A

General Information

Contract Details	
Contract Reference:	SR987863218
Contract Title:	Networks Managed Service Provider
Contract Description:	Supplier to provide run and maintain Network Services; design, build, test and deliver a transformation of Network Services; and support future projects.
Contract Anticipated Potential Value: this should set out the total potential value of the Contract	£32.37m for initial term (4 years); £48.62m full term (7 years)

Buyer details	
Buyer organisation name	Her Majesty’s Revenue & Customs
Billing address	100 Parliament Street, London, SW1A 2BQ
Buyer representative name	The name of your point of contact for this Order [REDACTED]
Buyer representative contact details	Email and telephone contact details for the Buyer’s representative. This must include an email for the purpose of Clause 44.3 of the Call-Off Terms. [REDACTED]

Buyer Project Reference

SR987863218

Supplier details

Supplier name

The supplier organisation name, as it appears in the Framework Contract
British Telecommunications plc.

Supplier address

Supplier's registered address BT Group plc, One Braham, Braham
Street, London, E1 8EE

Supplier representative name

The name of the Supplier point of contact for this Order. This must include an email for the purpose of Clause 44.3 of the Call-Off Terms.

[Redacted]

Supplier representative contact details

Email and telephone contact details of the supplier's representative [Redacted]

Order reference number

A unique number provided by the supplier at the time of quote
BTTS300375

Section B

Part 1 – Framework Lots (for multi-Lots only)

Framework Lot under which this Order is being placed		
1.	TECHNOLOGY STRATEGY & SERVICES DESIGN	<input type="checkbox"/>
2.	TRANSITION & TRANSFORMATION	<input type="checkbox"/>
3.	OPERATIONAL SERVICES	
	a: End User Services	<input type="checkbox"/>
	b: Operational Management	<input type="checkbox"/>
	c: Technical Management	<input type="checkbox"/>
	d: Application and Data Management	<input type="checkbox"/>
4.	MAJOR SERVICES TRANSFORMATION PROGRAMMES	<input type="checkbox"/>
5.	SERVICE INTEGRATION AND MANAGEMENT	<input type="checkbox"/>

Part 2 – Contract Details

Term <i>Guidance Note – this should be a period in months from the Effective Date should not exceed the maximum permitted duration for Lot 4 which is 84 months (7 years)</i>
Initial Term <i>Guidance Note – this should be a period in months from the Effective Date, up to the maximum period set out above</i>
48 months
Extension Period

Guidance Note – where the initial term above is not for the maximum permitted term and the buyer wants the option to include an extension period then inset the period of the extension in months, noting always that this cannot exceed the maximum permitted duration for Lot 4 (including the initial term) of 84 months (7 years).

36 months total (as individual 12 month extensions)

Sites for the provision of the Services

Guidance Note - Insert details of the sites at which the Supplier will provide the Services, which shall include details of the Buyer Premises, Supplier premises and any third party premises.

The Supplier shall provide the Services from the following Sites:

Buyer Premises:

HMRC Estate, the location as specified in each SoW or remote working. Buyer and Supplier shall agree in good faith the location from which the services are provided including working remotely and attendance to Buyer Premises.

Supplier Premises:

TBC during transition and transformation.

Third Party Premises:

Not applicable.

Buyer Assets

Guidance Note: see definition of Buyer Assets in Schedule 1 of the Contract.

Items licenced or leased by the Buyer to the Supplier, including HMRC IT equipment, data, software, systems and network access

Insurance

Guidance Note: if this Contract requires a higher level of insurance cover than the £1m default in Framework Agreement or the Buyer requires any additional insurances please specify the details below.

Third Party Public Liability Insurance (£) – 10 million

Professional Indemnity Insurance (£) – 1 million

Goods

Guidance Note: list any Goods and their prices.

Not applicable

Security Management – Option Part A or Part B

Guidance Note: Schedule 2.4 (Security Management) of the Call-Off Terms has two options in respect of Security Management. Refer to Schedule 2.4 (Security Management) for detailed guidance on which Part to select.

Security Management Schedule	Tick as applicable
Part A – Security Assurance	<input checked="" type="checkbox"/>
Part B – Security Accreditation	<input type="checkbox"/>

The Part selected above shall apply this Contract.

Section C**Part 1 – Additional and Alternative Buyer Terms****Alternative Clauses and Additional Clauses** (see Annex 3 of Framework Schedule 4)

This Annex can be found on the RM6100 CCS webpage. The document is titled RM6100 Alternative and Additional Terms and Conditions Lot 4

Part A – Additional Clauses

Additional Clauses	Tick as applicable
C1: Collaboration Agreement	<input type="checkbox"/>
C2: MOD Clauses	<input type="checkbox"/>

Where selected above the Additional Schedules and/or Clauses set out in document RM6100 Alternative and Additional Terms and Conditions Lot 4 shall be incorporated into this Contract.

Part B - Alternative Clauses

The following Alternative Clauses will apply:

Alternative Clauses	Tick as applicable
Scots Law	<input type="checkbox"/>
Northern Ireland Law	<input type="checkbox"/>

Where selected above the Alternative Clauses set out in document RM6100 Alternative and Additional Terms and Conditions Lot 4 shall be incorporated into this Contract.

Part 2 - Additional Information Required for Additional Clauses Selected in Part 1**Additional Clause C1 (Collaboration Agreement)**

An executed Collaboration Agreement (in the form set out in the attachments to this Order Form) shall be delivered from the Supplier to the Buyer within the stated number of Working Days from the Effective Date:

Not applicable

Section D
Contract award

This Contract is awarded in accordance with the provisions of the Technology Services 3 Framework Contract RM6100.

SIGNATURES

For and on behalf of the Supplier

Name	
Job role/title	
Signature	
Date	25 November 2022

For and on behalf of the Buyer

Name	
Job role/title	
Signature	
Date	25 November 2022

Attachments to this Order Form

Please refer to Lot 4 Order Form Attachments
Annex 2 HMRC Mandatory Terms

Attachment 2.1 – Service Description



Attachment 2.1

Services Description.x

Attachment 2.2 – Key Performance Indicators and Subsidiary Performance Indicators

ANNEX 1 | KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

PART I: SERVICE LEVEL PACKAGE

Introduction

All Performance Indicators apply to the Network Services within the scope of this Agreement. The table below specifies (i) the SLP which is to be used for the Service, and sets out service exceptions to the treatment of P4 and P5 Incidents (KPI 2). There are many other services listed in HMRC’s ITSM Tool which come under the overarching ‘Network Services’. All of these services are within the scope of this Agreement, and all should be measured and reported upon by the Supplier. The ITSM tool provides a function whereby KPI levels are configured against services, allowing time evolved to be measured, and this will be configured by HMRC during the Transition phase of this Agreement.

Service Level Package selections

ServiceNow ID	Service Short Name	Service Long Name	Default Service Level Package	Default Supported Hours	Differential Service Level Package applied to P4 and P5 Incident Response KPIs	Differential Supported Hours applied to P4 and P5 Incident Response KPIs
?		Network Services	High Availability	24 x 7	Standard	7am to 7pm

PART II: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Services are set out below.

The KPI measures for incidents (KPI 2) and service requests (KPI 8 and 9) will introduce a set of thresholds for a period following the Operational Commencement Date and then will default to the expected, standard measures as defined in the KPI tables. The Supplier will be required to achieve the standard measures from the ‘Cutover Date’ (6 months after Operational Service Commencement Date)

Any organisational change initiated by the Supplier will not be to the detriment of achieving the Service Levels as described in Part II, and for the avoidance of doubt any such organisational changes shall not impact the Supplier's rights in respect of the Allowable Assumptions.

TABLE 1 - Key Performance Indicators

Performance Area	Availability Management
Key Performance Indicator	1 - Availability
Minor KPI Failure Service Points	15
Major KPI Failure Service Points	20
Description	<p>The intent for provision of the Services is to maximise the amount of time for which all aspects of the Services are available for use by users and available to other integrated solutions. Any failure or outage to a component, device, route or traffic which could mean that a user may not be able to access or use the service will constitute a state of 'nonavailability'. <i>The Supplier will use the tools at its disposal to monitor all aspects of the network 24 x 7 x 365. The availability should be recorded and presented within the Performance Report as mentioned in this Agreement for each Measurement Period.</i></p> <p>Availability is determined as non-planned outage time (HH:MM:SS) as a proportion of total time in the Measurement Period (excluding planned downtime).</p> <p>To meet this Performance Indicator, the Supplier must meet or exceed the target availability for the Target Service Level, as set by the Service Level Package.</p> <p>Where the outage to the Service can be proven to have been caused by a third party, or the actions of HMRC personnel, the Supplier may seek mitigation through the Attribution Process against any service credit which may apply.</p> <p>The Networks MSP will not be held liable, under the terms of this schedule, for any outages to the provision of WAN/LAN connectivity services provided by HMRC's contracted WAN/LAN suppliers.</p>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Service Commencement Date

Method of calculation	<p>Availability for an individual application shall be calculated as follows: A / S (expressed as a percentage, to 2 decimal places) where:</p> <p>A = Actual service hours the Service is available and accessible by users.</p> <p>S = the total hours in the Measurement Period during which the Service is required to be supported in accordance with the Agreement, minus any planned unavailability due to planned downtime that is pre-agreed by the Parties.</p> <p>A and S shall be calculated based on the contracted support hours for the applicable Service.</p> <p>"Availability Target" shall mean amounts specified as such in the Target Service Level and Performance Thresholds in the table entitled "KPI 1 (Availability) Target Performance Levels and Severity Level Thresholds" for this KPI below in respect of the relevant Service Level Package selected for this KPI, as identified in Part I (<i>Service Level Package</i>) of this Annex 1.</p> <p>Availability of all services should be measured using monitoring and other tools as appropriate, and as currently available using HMRC's existing tooling.</p>
KPI to be Published?	Yes

By Service Level Packages KPI 1 (Availability) Target Performance Levels and Severity Level Thresholds					
Service Level Package	Service Hours	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold
High Availability	24 x 7	The operational service meets or exceeds Availability Target of 99.99%	The operational service is less than the Availability Target of 99.99%	The operational service is less than the Availability Target of 99.8%	The operational service is less than the Availability Target of 99.7%

Performance Area	Incident Management
Key Performance Indicator	2 - Incident Resolution Times

Minor KPI Failure Service Points	15
Major KPI Failure Service Points	20
Description	<p>The intent for the Network Services provision is to reasonably minimise the time taken to resolve an Incident, based on the priority of Incidents. Target and service measures of Supported Hours and Service Days are based on contracted supported hours for the Services as per the Service Level Package.</p> <p>HMRC's ITSM tool shall be used to measure Incidents. The measurement dataset in a Measurement Period is based on Incidents that have been Closed during that Measurement Period. HMRC's ITSM tool measures in seconds in this format – HH:MM:SS.</p> <p>"Closed" means the state recorded as "closed" in the ITSM Tool, which is the state an Incident is moved to automatically 7 days after it is recorded as Resolved, unless it is required to be put back into service.</p> <p>The Resolution Time will pause for any time outside of the Supported Hours defined in the chosen Service Level Package, associated to the Service to which the Incident relates to in the ITSM Tool. The pause time will be excluded from the KPI calculation of the Resolution Time for that incident. Incident Resolution Times are only counted within Supported Hours.</p>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Service Commencement Date
Method of calculation	<p>For the purpose of this Service Level:</p> <p>"Resolution Time" shall, in respect of an Incident, mean the elapsed time (not including time properly excluded in accordance with the conditions set out below and in the Description section above for the purpose of calculating the Resolution Time) occurring during Supported Hours commencing at the time the Incident ticket has been allocated to the Supplier's assignment groups in the ITSM Tool and ending at the sooner of:</p> <ul style="list-style-type: none"> • the time the Incident is Resolved as recorded in the ITSM Tool; or

	<ul style="list-style-type: none"> the time the Incident is permanently reassigned to another supplier's assignment group (including returning the Incident to HMRC's IT Service Desk) as recorded in the ITSM Tool. <p>"Supported Hours" shall mean the contracted hours in the Service Period during which the relevant Services are required to be supported, as determined by the Service Level Package for each Service as detailed in Part I of this Annex.</p> <p>"Resolved" means that: the Incident has</p> <ul style="list-style-type: none"> been fully resolved; or a fix has been applied; or a resolution plan (submitted by the Supplier to an Authority representative) has been put in place, provided that: <ul style="list-style-type: none"> the resolution plan has been agreed by the Authority representative; or the Authority has failed to either approve or reject the resolution plan within a reasonable time of receiving such plan, <p>such that the Incident ticket has been moved into the "Resolved" state in the ITSM Tool, and "Resolution" shall have a corresponding meaning.</p> <p>For the purpose of calculating the Resolution Time:</p> <ul style="list-style-type: none"> the Resolution Time shall be measured during Supported Hours only, such that if an Incident ticket is allocated to a Supplier assignment group outside of the Supported Hours, the Resolution Time shall only commence when the Supported Hours commence; where an Incident is allocated to the Supplier's assignment groups several times during the Incident resolution process, the Resolution Time shall be the total duration for which the Incident is formally assigned to the Supplier's assignment group; where the Resolution Time is measured in Working Days, the target has been achieved if the number of elapsed Working Days is equal to or less than the target number of Working Days. For example, an Incident which is allocated to the Supplier's assignment groups at 11:00 on Working Day 1 and is required to be Resolved within one (1) Working Day must be Resolved by 11:00 on Working Day 2; <p>Additionally:</p> <ul style="list-style-type: none"> If an Incident is resolved by the Supplier but the Authority elects to keep that Incident open for monitoring purposes, the Resolution Time for that Incident shall end at the time the Incident is resolved;
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	<ul style="list-style-type: none"> • if an Incident is allocated to the Supplier's assignment groups with insufficient or incorrect information; and as a result, the Supplier takes additional time to resolve the Incident, then the Supplier will be entitled to make a request through the Attribution Process in respect of such additional time taken to resolve the Incident; • If HMRC requests that the Supplier resolve an Incident at a later time or date, then the elapsed time between such request and the time at which HMRC has specified that the Incident is to be resolved may be excluded from the Resolution Time; <p>The KPI method of calculation where the KPI will be measured by percentage is as follows:</p> <p style="text-align: center;">Performance of KPI 2 for a Priority level = $\text{WRTp} / \text{TCIp}$ (expressed as a percentage, to 2 decimal places)</p> <p>where:</p> <p>WRTp (Within Resolution Time for that Priority) means the number of Incidents that were Closed in that Measurement Period and which have a Resolution Time within that expressed in the Target Resolution Time for that Priority level (the relevant Priority level being the level as at Closure of that Incident).</p> <p>TCIp (Total Closed Incidents for that Priority) means the total number of Incidents of the same Priority level (such Priority level being the level as at Closure) that were Closed in that Measurement Period. Where this is zero in a Measurement Period, this KPI shall not be measured in that Measurement Period.</p>
KPI to be Published?	Yes

KPI 2 Target Performance Levels and Severity Level Thresholds - From the Operational Commencement Date to the Cutover Date					
Service Level Category	Target Resolution Time	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Priority 1 (P1)	4 Hours (measured by Supported Hours)	No more than one Incident has a Resolution Time that is not within the Target Resolution Time	More than one Incident does not have a Resolution Time within the Target Resolution Time	More than two Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 2 (P2)	8 Hours (measured by Supported Hours)	No more than two Incidents have a Resolution Time that is not within the Target Resolution Time	More than two Incidents do not have a Resolution Time within the Target Resolution Time	More than four Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 3 (P3)	1 Working Day (measured by Supported Hours)	No more than 85% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 15% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 20% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 4 (P4)	3 Working Days (measured by Supported Hours)	No more than 80% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 20% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 25% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 5 (P5)	5 Working Days (measured by Supported Hours)	No more than 85% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 15% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 20% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use

KPI 2 Target Performance Levels and Severity Level Thresholds - Post Cutover Date					
Service Level Category	Target Resolution Time	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Priority 1 (P1)	4 Hours (measured by Supported Hours)	No more than one Incident has a Resolution Time that is not within the Target Resolution Time	More than one Incident does not have a Resolution Time within the Target Resolution Time	More than two Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 2 (P2)	8 Hours (measured by Supported Hours)	No more than two Incidents have a Resolution Time that is not within the Target Resolution Time	More than two Incidents do not have a Resolution Time within the Target Resolution Time	More than four Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 3 (P3)	1 Working Day (measured by Supported Hours)	No more than 85% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 15% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 20% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 4 (P4)	3 Working Days (measured by Supported Hours)	No more than 90% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 10% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 15% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use
Priority 5 (P5)	5 Working Days (measured by Supported Hours)	No more than 95% of Incidents have a Resolution Time that is not within the Target Resolution Time	More than 5% of Incidents do not have a Resolution Time within the Target Resolution Time	More than 10% of Incidents do not have a Resolution Time within the Target Resolution Time	Not in Use

Performance Area	Problem Management
Key Performance Indicator	3 – Problem Management Problem Assessment Threshold
Minor KPI Failure Service Points	5

Major KPI Failure Service Points	10
Description	The intent for the Services is to reasonably minimise the time taken to assess and confirm the Problem.
Measurement Period	Service Period
Measurement Start Date (if not the Operational	Operational Service Commencement Date
Service Commencement Date)	

Method of calculation	<p>The ITSM tool shall be used to measure Problems. The measurement dataset in Measurement Period is based on Problems that have been Closed during that Measurement Period. HMRC's ITSM tool measures in seconds in this format – HH:MM:SS.</p> <p>"Closed" means the state recorded as "closed" in the ITSM Tool, which is the state a Problem is moved to manually by the Authority after it is recorded as Resolved in accordance with its own policies and procedures.</p> <p>"Assessment Time" means, in respect of a Problem of a Measured Priority (refer to below), the elapsed time (not including time properly excluded in accordance with the conditions set out below) measured by the ITSM Tool and occurring during the Problem Assessment Threshold Hours (refer to below) commencing at the time the Problem record is raised as "New" in the ITSM Tool and ending at the time the Problem record has (once it has moved through the "Assess" state in the ITSM Tool) been moved into the "Root Cause Analysis" state in the ITSM Tool.</p> <p>"Assessed" means the Problem record has been moved into the "Root cause Analysis" state in the ITSM Tool, being the state within the ITSM tool whereby the Problem has been assessed and the nature of the cause under investigation.</p> <p>"Problem Assessment Threshold Hours" means, in respect of the Assessment Time, that the Assessment Time is only measured during Working Days, measured on a Mon-Fri, 08:00 to 18:00 Basis, no holiday support (i.e. during the Supported Hours for this KPI).</p> <p>Only P1, P2, P3 and P4 Problems ("Measured Problems") are measured and subject to this KPI.</p> <p>Where Tasks are assigned to Other Suppliers or the Authority during the Assessment of a Problem, the measurement of the Assessment Time does not pause, but the Supplier may request the exclusion of such records where unreasonable delays have caused KPI Failures through the Attribution Process described above in Paragraph Error! Reference source not found. of Part B (Performance Monitoring).</p> <p>"Task" means a task attached to the relevant Problem ticket in the ITSM Tool requiring an activity to be performed, or information to be provided, by the Authority or an Other Supplier.</p> <p>Where Problem records cannot be diagnosed, agreement with Authority should be sought. Where the Authority agrees to accept the risk, the relevant Problem record can be closed and will be excluded from measurement under this Schedule.</p>
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	<p>during decimal places of calculating Incident performance where the number of Problems of the Measured Priorities which are Closed in that Measurement Period is 20 or more, a percentage will be used. The percentage will be calculated to two decimal places.</p> <p>Method of calculation where the KPI will be measured by Performance:</p> <p>of KPI 3 for Measured Priorities = $\frac{WATmp}{TCPmp}$ (expressed as a percentage, to 2 decimal places)</p> <p>WATmp (Within Assessment Time for Measured Priorities) means the number of Problems of a Measured Priority that were Closed in that Measurement Period and which has an Assessment Time within that expressed in the Target Performance Level for the Measured Priorities (the relevant Priority level being the level as at Closure of the Problem).</p> <p>TCImp (Total Closed Problems for Measured Priorities) means the total number of Problems of the Measured Priorities (the relevant Priority level being the level as at Closure of the Problem) that were Closed in that Measurement Period. Where this is zero in a Measurement Period, this KPI shall not be measured in that Measurement Period.</p>
KPI to be Published?	Yes

KPI 3 Target Performance Levels and Severity Level Thresholds				
Service Level Category	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Measured Problems - P1, P2, P3 and P4	<div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div>	<div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div>	<div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div>	<div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div> <div>██████████</div>
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Performance Area	Problem Management
Key Performance Indicator	4 – Problem Management Problem Resolution Times
Minor KPI Failure Service Points	█
Major KPI Failure Service Points	█
Description	<div>██</div> <div>██</div>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Service Commencement Date

	<div></div> <div></div>
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KPI to be Published?	No

KPI 4 Target Performance Levels and Severity Level Thresholds					
Service Level Category	Target Resolution Time	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold
Problem Category - P1, P2.					

Problem Category - P3, P4					

Performance Area	Maintenance
Key Performance Indicator	5 – Maintenance and Patch Compliance Reporting
Minor KPI Failure Service Points	
Major KPI Failure Service Points	

Description	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Service Commencement Date
Method of calculation	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
KPI to be Published?	No

OFFICIAL

	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Services Commencement Date

Method of calculation	<div data-bbox="549 156 1267 349"><div></div><div></div><div></div><div></div><div></div></div> <div data-bbox="549 389 1281 542"><div></div><div></div><div></div><div></div></div> <div data-bbox="549 582 1267 658"><div></div><div></div></div> <div data-bbox="549 698 1319 851"><div></div><div></div><div></div><div></div></div> <div data-bbox="549 927 1241 1003"><div></div><div></div></div> <div data-bbox="549 1043 1331 1236"><div></div><div></div><div></div><div></div><div></div></div>
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	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
KPI to be Published?	No

KPI 6 Target Performance Levels and Severity Level Thresholds				
Service Level	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold
Critical Security Patches	<div></div> <div></div> <div></div> <div></div> <div></div>	<div></div>	<div></div> <div></div> <div></div> <div></div>	

Performance Area	Service Requests
Key Performance Indicator	7 – Standard Service Request Fulfilment
Minor KPI Failure Service Points	<div></div>
Major KPI Failure Service Points	<div></div>

Description	<div></div> <div></div> <div></div>
	<div></div> <div></div> <div></div> <div></div>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Services Commencement Date

Method of calculation	
KPI to be Published?	TBC

KPI 7 Target Performance Levels and Severity Level Thresholds				
Service Level	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Standard Service Requests Completed	<div></div>	<div></div>	<div></div>	<div></div>
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	
	<div></div>	<div></div>	<div></div>	

Performance Area	Service Requests
Key Performance Indicator	8 –Non Standard Service Request Impacting
Minor KPI Failure Service Points	<div></div>
Major KPI Failure Service Points	<div></div>
Description	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>

	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Services Commencement Date
Method of calculation	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
KPI to be Published?	TBC

KPI 8 Target Performance Levels and Severity Level Thresholds				
Service Level	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Standard Service Requests Completed	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	[REDACTED]	
			[REDACTED]	

Performance Area	Change Management
Key Performance Indicator	9 – Change Enablement
Minor KPI Failure Service Points	[REDACTED]
Major KPI Failure Service Points	[REDACTED]
Description	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Services Commencement Date
Method of calculation	[REDACTED] [REDACTED]

	<div></div> <div></div> <div></div> <div></div> <div></div>
KPI to be Published?	TBC

KPI 10 Target Performance Levels and Severity Level Thresholds				
Service Level	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold
P1/P2 caused as a result of a change implementation (RFC)	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div>

Performance Area	Digital Certificates
Key Performance Indicator	10 – Certificates Status Reporting and Expiry
Minor KPI Failure Service Points	<div></div>
Major KPI Failure Service Points	<div></div>
Description	<div></div> <div></div> <div></div> <div></div> <div></div>

	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
Measurement Period	Service Period
Measurement Start Date (if not the Operational Service Commencement Date)	Operational Service Commencement Date
Method of calculation	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
KPI to be Published?	No

KPI 10 Target Performance Levels and Severity Level Thresholds				
Service Level	Target Performance Level	Minor Failure Performance Threshold	Major Failure Performance Threshold	Critical Failure Performance Threshold

Delivery of the Certificate Status Report	<= 3 Working Days following the start of the Measurement Period	> 3 Working Days following the start of the Measurement Period	> 7 Working Days following the start of the Measurement Period	N/A
P1/P2/P3 caused as a result of the expiry of a digital Certificate	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TABLE 2 - Subsidiary Performance Indicators

Performance Area	Planned Downtime
Subsidiary Performance Indicator	1 – Planned Downtime
Minor SPI Failure Service Points	N/A
Major SPI Failure Service Points	N/A
Description	The intent for the Services is to minimise the number of times that the Services need to be taken offline for planned activities.
Measurement Period	Service Period, one month
Measurement Start Date (if not an Operational Service Date)	July 2022
Method of calculation	Planned Downtime is an event whereby a Service is taken out of service intentionally by the Supplier in order to perform maintenance or software release activities. Each planned downtime is to be reported upon by the Supplier per Service period.

	<p>All planned downtimes must be agreed in advance with HMRC. The aim is to minimise the occurrence of planned downtimes within each Service period.</p> <p>This SPI is measured by the number of planned downtimes occurring in a Measurement Period falling within the number of planned downtimes for that Measurement Period that is agreed with the Authority. Where any planned downtime occurs that has not been agreed with HMRC this will be recorded as a failure against this SPI.</p>
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TABLE 3 – Social Value Indicators (SVIs)

1 Initiative for Theme 3 (Fighting climate change)

KPI to be Published: Yes

2 Initiatives for Theme 2 (Tackling economic equality)

KPI to be Published: Yes



Social Value



HMRC Network

Indicators_Supplier re Managed Service Prov

	Tackling Economic Inequality	Fighting Climate Change
Timings Q1 FY 23/24	<ol style="list-style-type: none">1. Develop action plan2. Confirm Year 1 initiatives and associated KPIs3. Confirm transparency reporting format and periodicity4. Confirm data and agreed monitoring tools	<ol style="list-style-type: none">1. Develop action plan2. Confirm Year 1 initiatives to reduce greenhouse gases, waste, and water and confirm associated KPIs3. Confirm transparency reporting format and periodicity4. Confirm data and agreed monitoring tools
Timings Q2-Q4 FY 23/24	<ol style="list-style-type: none">1. Review of performance against agreed initiatives	<ol style="list-style-type: none">1. Review of performance against agreed initiatives
Timings Q4 FY 23/24	<ol style="list-style-type: none">1. Confirm Year 2 to Year 4 initiatives, associated KPIs and timed action plans	<ol style="list-style-type: none">1. Confirm Year 2 to Year 4 initiatives, associated KPIs and timed action plans

Metrics	For Year 1: 1. Number of new STEM ambassadors identified 2. Number of sessions delivered within the community	1. Initial sessions organised, delivered and documented 2. Specific measures to be confirmed for each of the environmental and sustainability objectives to
	3. Number of women, ethnic minority and disabled individuals engaged 4. Number of engagement and listening sessions held 5. Number of participants 6. Number of follow up actions identified and addressed Further metrics for following years to be agreed	be delivered from 3 months to the end of Year 1 of the contract 3. Number of sessions 4. Number of employees, suppliers and/or SMEs engaged 5. Number of 'small changes' identified 6. Number of supplier and SME climate commitment identified in 2023 Further metrics for following years to be agreed
Tools	[To be inserted Q1 of the first Contract Year]	[To be inserted Q1 of the first Contract Year]
Reporting	Monthly reviews calls throughout	Monthly reviews calls throughout
Transparency	[To be inserted Q1 of the first Contract Year]	[To be inserted Q1 of the first Contract Year]

Attachment 2.3 – Environmental Requirements

TABLE A – Prohibited Items

The following consumer single use plastics are Prohibited Items:	Catering * Single use sachets e.g. coffee pods, sauce sachets, milk sachets Take away cutlery * Take away boxes and plates Cups made wholly or partially of plastic Straws * Stirrers * Water bottles
	Facilities Single use containers e.g. hand soap, cleaning products * Wipes containing plastic
	Office Supplies Plastic envelopes * Plastic wrapping for brochures * Paper or card which is bleached with chlorine
	Packaging * Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products. * Single use carrier bags
	Not applicable
Buyer specific Prohibitions	Not applicable
Project specific Prohibitions	Not applicable

TABLE B – Permitted Items

Buyer Permitted Items	Not applicable
Project Specific Permitted Items	Not applicable

TABLE C – Sustainability Reports

Report Name	Content of Report	Frequency of Report
Sustainability Impact	<ul style="list-style-type: none"> a. the key sustainability impacts identified; b. sustainability improvements made; c. actions underway or planned to reduce sustainability impacts; d. contributions made to the Buyer's sustainability policies and objectives; e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and f. risks to the Service and Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks. 	On the anniversary of the Effective Date
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill.	Before contract award and on the anniversary of the Effective Date.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose waste
Greenhouse Gas Emissions	Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses	On the anniversary of the Effective Date
Water Use	Volume in metres cubed.	On the anniversary of the Effective Date

Energy Use	<p>Separate energy consumption figures for:</p> <ul style="list-style-type: none"> a. assets deployed on the Supplier's site; b. assets deployed on the Buyer's site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. <p>Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.</p>	On the anniversary of the Effective Date
Transport Use	<ul style="list-style-type: none"> a. miles travelled by transport and fuel type, for goods delivered to the Buyer's sites; b. miles travelled by staff when visiting the Buyer's sites from the Supplier's sites or home; c. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees 	on the anniversary of the Effective Date

Attachment 2.4 – Information Management System

Not applicable

Attachment 3 – Buyer’s Responsibilities



Attachment 3 Buyer's Tender Clarification
Responsibilities.xlsx Record.xlsx

Additional Buyer Dependencies

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Attachment 4.1 – Supplier Solution



Supplier response_BT
SR987863218.docx



Appendix C -
Security Plan Question



Bid Clarification.xlsx

Attachment 4.2 – Commercially Sensitive Information

Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality

The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

The Buyer agrees that references in any documentation provided by the Supplier in relation to a further competition or the Call Off Contract, that relate to the Supplier's customers, customer contracts, subcontractors, personal data and prices and charges will be exempt from disclosure in accordance with the provisions of the FOIA.

Attachment 4.3 – Notified Key Sub-Contractors

- 1 In accordance with Clause 15.10A (*Appointment of Key Sub-contractors*), the Supplier is entitled to subcontract its obligations under this Contract to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Attachment periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Buyer after the Effective Date for the purposes of the delivery of the Services.

Key Subcontractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Subcontract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold

Attachment 4.4 – Third Party Contracts

- 1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 2 The Supplier shall be entitled to update this Attachment in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description

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Attachment 5 – Software

The Software below is licensed to the Buyer in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

The Parties agree that they will update this Attachment periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

1 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/ Expiry

2 THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/ Expiry

Attachment 6.1 – Outline Implementation Plan

Transition Programme

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (<i>Working Days</i>)	Milestone Date	Buyer Responsibilities (<i>if applicable</i>)
Mobilisation	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>	<div><div></div></div>	<div><div></div></div>	
Service Readiness	<div><div></div><div></div><div></div><div></div><div></div><div></div></div>	<div><div></div></div>	<div><div></div></div>	

Service Acceptance				
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Attachment 6.2 – Test Success Criteria

1. Tests to be Achieved in order to Achieve the ATP Milestone – aligned to Attachment 2.1 as appropriate

Test	Pre-conditions*	Test Success Criteria

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria
1	Mobilisation	<div><div></div><div>XXXXXXXXXXXXXXXXXXXX</div><div><div></div>XX</div><div>XXXXXXXXXXXXXXXXXXXX</div><div><div></div>XX</div><div>XXXXXXXXXXXX</div><div><div></div>XX</div><div><div></div>XX</div><div><div></div>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</div><div><div></div>XX</div><div>XXXXXXX</div></div>

2	Service Readiness	<div><input type="checkbox"/>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX</div> <div><input type="checkbox"/>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX</div> <div><input type="checkbox"/>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</div> <div><input type="checkbox"/>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</div>
3	Service Acceptance	<div><input type="checkbox"/>XXXXXXXXXXXXXXXXXXXX</div>

Attachment 7.1 – Charges

Part A - Pricing Mechanism

TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

Role	Day Rate (SFIA Level)			
	Apprentice L2	Junior L3	Senior L5	Specialist L6
Information Security Manager				
Methods & Tools Engineer				
Network Design Lead				
Network Engineer				
Network Implementation Manager				
Service Manager				

TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

Not applicable

TABLE 3: DAY COST FOR CALCULATION OF GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES

Not applicable

TABLE 4: GUARANTEED MAXIMUM PRICE WITH TARGET COSTS CHARGES

Not applicable

TABLE 5: FIXED PRICES

Charge	Fixed Charge (£)
Transition Milestone	
Transition Milestone	
Run & Maintain	
Year 1	
Year 2	
Year 3	
Year 4	
Service Optimisation & Innovation	
Design	

TABLE 6: FIRM PRICES

Not applicable









Year 2		
Year 3		
Year 4		
Design		

TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

Not applicable

TABLE 4: OPTIONAL SERVICES SERVICE CHARGES

Not applicable



Crown
Commercial
Service

Part C – Risk Register

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Postmitigation impact (£)	Forecast Contingency Costs	Owner



Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of Impact on the proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Part D – Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

	<div>[REDACTED]</div>	<div>[REDACTED]</div>		<div>[REDACTED]</div>		<div>[REDACTED]</div>				
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Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of Impact on the proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

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Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

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Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

	[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]		[REDACTED]		
--	------------	--	------------	------------	--	------------	--	------------	--	--



Crown
Commercial
Service



Crown
Commercial
Service

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
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Attachment 7.2 – Maximum Payments on Termination

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Buyer shall be liable to pay to the Supplier pursuant to this Contract:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year			
Anytime in the second Contract Year			
Anytime in Contract Years 3 – 4			



Attachment 7.3 – Approved Benchmarkers

The Authority shall appoint as the Benchmarker to carry out the Benchmark Review such organisation as the Authority, acting reasonably, deems appropriate. The Authority shall confirm the identity of the Benchmarker by written notice to the Supplier.

If the Supplier, acting reasonably, disagrees with the identity of the Benchmarker that the Authority has selected, it shall notify the Authority in writing no later than five (5) days following the date of the Authority's written notification of the identity of the Benchmarker, giving reasons for its objection and proposing one or more alternatives.

The Authority shall consider the Supplier's objection (and shall act reasonably in doing so) and shall seek to reach an agreement with the Supplier as to an alternative benchmarker, however the final decision as to the Benchmarker to be appointed shall rest with the Authority.



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Attachment 7.4 – Financial Distress

Part A - Financial Indicators

1. Subject to the calculation methodology set out at Part D of this Attachment, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 2.3(b) of Schedule 7.4 (Financial Distress)]
1 Operating Margin	<i>Operating Margin = Operating Profit / Revenue</i>	should not be less than 5%	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date
2 Net Debt to EBITDA Ratio	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>	should not be greater than 3.5x	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon EBITDA for the 12 months ending on, and Net Debt at, the relevant accounting reference date

Key: ¹ – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

2. Monitored Suppliers

Monitored Supplier	Applicable Financial Indicators (these are the Financial Indicators from the table in the table immediately above in Part A of this Attachment which are to apply to the Monitored Suppliers)
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n/a	
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Part B – Rating Agencies

1. Standard and Poor's; and
2. Moody's

• Part C – Credit Ratings

Entity	Credit Rating (long term) <i>(insert credit rating issued for the entity at the Effective Date)</i>	Credit Rating Threshold
Supplier	Standard & Poor's - BBB	BB+
	Moody's - Baa2	Ba1



• Part D – Calculation Methodology for Financial Indicators

1.1 The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1.

Terminology: The terms referred to in this Attachment 7.4 (Financial Distress) are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).

2. **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 Operating Margin	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.</p>



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<p>2</p> <p>Net Debt to EBITDA Ratio</p>	<p><i>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</i></p> <p><i>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</i></p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p>
	<p><u><i>Net Debt</i></u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not nondesignated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p><u><i>EBITDA</i></u>: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. <i>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</i></p>

Attachment 7.6 – Anticipated Savings

Not applicable



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Attachment 8.1 – Representation and Structure of Boards

Service Management Board

Buyer Members of Service Management Board	[REDACTED]
Supplier Members of Service Management Board	[REDACTED] [REDACTED]
Start Date for Service Management Board meetings	
Frequency of Service Management Board meetings	
Location of Service Management Board meetings	Microsoft teams/Authority premises

Operational Performance Board

Buyer members of Programme Board	[REDACTED]
Supplier members of Programme Board	[REDACTED] [REDACTED]
Start date for Programme Board meetings	
Frequency of Programme Board meetings	Monthly
Location of Programme Board meetings	Microsoft teams/Authority premises

Change Management Board

Buyer Members of Change Management Board	[REDACTED]
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Supplier Members of Change Management Board	
Start Date for Change Management Board meetings	
Frequency of Change Management Board meetings	Quarterly, or at any other frequency as required by the Authority acting in its sole discretion
Location of Change Management Board meetings	Microsoft teams/Authority premises

Technical Board

Buyer Members of Technical Board	
Supplier Members of Technical Board	
Start Date for Technical Board meetings	
Frequency of Technical Board meetings	Monthly
Location of Technical Board meetings	Microsoft teams/Authority premises

Risk Management Board

Buyer Members for Risk Management Board	
Supplier Members for Risk Management Board	
Start Date for Risk Management Board meetings	
Frequency of Risk Management Board meetings	Monthly
Location of Risk Management Board meetings	Microsoft teams/Authority premises



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Attachment 8.4 – Transparency Reports and Records to Upload to Virtual Library

Part A - Transparency Reports

Title	Content	Format	Frequency
(Performance)			
Social Value Delivery	To refine the Supplier's commitments and metrics and define reporting requirements	Management Information Reports	Quarterly
(Charges)			
(Major sub-contractors)			
(Technical)			
Performance management	Attachment 2.2 – Key Performance Indicators	Management Information Reports	Monthly



Part B - Records to Upload to Virtual Library

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Buyer	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Buyer
Cl 14.3	Key Personnel	Attachment 9.2	Effective Date	On replacement of Key Personnel	Buyer
Sch 2.2, Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 2.2, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Buyer
Sch 2.4, Para 4	Core Information Management System Diagram	Attachment 2.4	Operational Services Commencement Date	Any update, annually and after any of the events in para 6.13	Buyer
Sch 2.4, Para 6	Risk Management Documentation	Sch 2.4, Annex 3	Operational Services Commencement Date	Any update, annually and after any of the events in Schedule 2.4, para 6.13 of	Buyer
Cl 22	Commercially Sensitive Information	Attachment 4.2	Effective Date	Upon Contract by the Buyer to vary the information	Buyer and/or Auditor
Cl 15.7	Notified Key Subcontractors	Attachment 4.3	Effective Date	On replacement of key subcontractor	Buyer



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CI 15.5	Third Party Contracts	Attachment 4.4	Effective Date	On appointment of subcontract	Buyer
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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
CI 15.6	Notified Key Sub-Contractors	Attachment 4.3	Effective Date	With each approved appointment or variation	Buyer
CI 15.23	Supply chain Transparency Information Reports	Sch 8.4, Annex 4	thirty days prior to the of the end of each financial year	Every twelve (12) months	Buyer
CI 16,17	Software	Sch 5 and Attachment 5	Operational Services Commencement Date	Upon Contract by the Buyer to vary the information	Buyer
CI 6.4	Detailed Implementation Plan	Sch 6.1	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Buyer
Sch 6.2, Para 4	Test Strategy	As appropriate and agreed by the Buyer	Within 20 Working Days of Effective Date	Upon update to the test strategy	Buyer
Sch 6.2, Para 5	Test Plan	As appropriate and agreed by the Buyer	20 prior Working Days of relevant test	Upon update to the test plan	Buyer
Sch 6.2, Para 8	Test Specification	As appropriate and agreed by the Buyer	10 prior Working Days of relevant test	Upon update to the test specification	Buyer



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Sch 6.2, Para 8	Test Report	As appropriate and agreed by the Buyer	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following the relevant test completion	Reissue with each retest	Buyer
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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7.1, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Buyer	Within 10 Working Days of the Effective Date	Upon Contract by the Buyer to vary the template	Buyer
Sch 7.1, Annex 4	Risk Register	Attachment 7.1 (Part C)	Effective Date	Upon Contract by the Buyer to vary the by the Risk Management Board	Buyer
Sch 7.3, Para 5	Benchmarking Plan	Sch 7.3	Upon receipt from Benchmarker	Approval of Plan	Buyer and Auditor
Sch 7.3, Para 5	Benchmarking report	Sch 7.3	Upon receipt from Benchmarker	Any update	Buyer and Auditor
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4	Buyer



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Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Buyer	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Buyer
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed		Buyer
P	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter		Buyer
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates		Buyer

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7.5 Part B, para 1.2	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term		Buyer
Sch 8.1, Para 3.3	Representation and Structure of boards	Attachment 8.1	Within 7 days of receipt of intention, or in the case of a non-Buyer board member agreement by the Buyer		Buyer



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Sch 8.1, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Buyer	Within 7 days of receipt from chairperson		Buyer
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Buyer	Within 10 Working Days of date of receiving change request.		Buyer
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Buyer	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Buyer to update under Schedule 8.1 Para 5.7	Buyer
Sch 8.2, Para 2.6	Update full copy of the Contract and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Buyer
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 working days of Buyer issuing the Change Request		Buyer

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Buyer
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Buyer



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Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1	Buyer
Sch 8.5, Para 2.1 (a)	Register of All Assets, Subcontracts and Other Relevant Contracts	As appropriate and agreed by the Buyer	Within 3 months of the Effective Date	Any variation	Buyer
Sch 8.5, Para 2.1 (b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Buyer	Within 3 months of the Effective Date	Any variation	Buyer
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Buyer	On reasonable notice given by the Buyer at any point during the Term	Within 10 Working Days of Buyer's written request	Buyer and its potential Replacement Suppliers
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 4.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Buyer following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Contract.	Buyer

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
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Sch 8.5, Para 5.7 (b)	Buyer Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Buyer	At the end of the Termination Assistance Period	-	Buyer
Sch 8.5, Annex 1, Para 1, Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Buyer	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Buyer	
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Buyer
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.		
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part 2 Para 11.2	Sch 8.6, Para 11.8	Buyer
Sch 7.4 Para 8	Board Confirmation	As set out at Annex 5 of Sch 7.4	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Buyer
Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)



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Sch 9.1, Part E, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Buyer	Sch 9.1, Para 1.1 A-D	At such intervals as are reasonably requested by the Buyer	Buyer
Sch 9.1, Part E, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Buyer	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Buyer and, at the discretion of the Buyer, the Replacement Supplier and/or any Replacement Subcontractor
Sch 9.1, Part E, Para 1.6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Buyer	Effective Date		Buyer
Sch 9.1, Part E, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Buyer	Within 5 Working Days following the Service Transfer Date	-	Buyer, any Replacement Supplier and/or Replacement Sub-contractor
Sch 9.1, Annex	List of Notified Sub-contractors	As appropriate and agreed by the Buyer	Effective Date	Upon any change	Buyer
Sch 9.2	Key Personnel	Attachment 9.2	Effective Date	As amended from time to time	Buyer
Sch 11, Annex Para 2.1	Reports on Data Subject Access Requests	As appropriate and agreed by the Buyer	As agreed with Buyer	As agreed with Buyer	Buyer and Supplier



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Attachment 9.1 – List of Notified Sub-Contractors

Attachment 9.2 – Key Personnel

Key Role	Name of Key Personnel	Responsibilities/Aut horities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role



Attachment 11 – Processing Personal Data

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 23.2 to 23.15 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>Name Personal Identification Department, Directorate and Job Title Email Address Phone number (mobile and fixed)</p>
Duration of the processing	Initial term and any Extended Term
Nature and purposes of the processing	Processing is limited to the administration of Active Directory and, where necessary, access to Buyer systems, including but not limited to collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data and/or Sanitised Personal Data (whether or not by automated means) for the purpose of delivery of the Service defined under Schedule 2.1.



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Type of Personal Data	Name Personal Identification Department, Directorate and Job Title Email Address Phone number (mobile and fixed)
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This Attachment 11 shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Buyer at its absolute discretion.

1.1.1.1 The contact details of the Buyer's Data Protection Officer are:

[REDACTED]

1.1.1.2 The contact details of the Supplier's Data Protection Officer are:

[REDACTED]

1.1.1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.1.1.4 Any such further instructions shall be incorporated into this Attachment 11.



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Categories of Data Subject	Personal Data relating to Buyer employees/personnel and/or any personnel of third party suppliers of the Buyer made available under or in connection with this Contract
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	To be advised and agreed as part of Exit

SCHEDULE 2.1

SERVICES DESCRIPTION

Attachment 2.1 (Services Description) of the Order Form

SCHEDULE 2.2

PERFORMANCE LEVELS

1 DEFINITIONS

In addition to Schedule 1, the following definitions shall apply:

"Attribution Process"	has the meaning given in Paragraph Error! Reference source not found. of Part B (Performance Monitoring)
"Critical Failure Performance Threshold"	means, in respect of a KPI, the performance threshold of such KPI, the performance of the Services above or below which would determine the Severity Level of a particular Performance Failure as set out in Paragraph Error! Reference source not found. of Part A;
"Cutover Date"	the date by which incident and service request KPIs will revert to the standard levels, as defined in Annex 1 Part 1 of this Agreement. This only applies KPIs 2, 8 and 9.
"end user" or "HMRC end user"	means any person authorised by the Authority to access the Authority's network;
"Service Period"	means the period of time by which the services are provided, for the purpose of this document, this represents one calendar month
"Measurement Period"	means the period of time by which the KPI is measured
"Standard Service Request"	a service request available and selected from HMRC's Service catalogue within the ITSM Tool and as defined within the SPPM.;
"Non-Standard Service Request"	a type of service request raised on the HMRC's ITSM Tool, which would not be selected from the Service Catalogue, usually raised for project work and as defined in the SPPM
"ITSM Tool" or "HMRC's ITSM Tool"	means the Authority's IT service management tool;
"KBE Measure"	has the meaning given in Paragraph 2.10 of Part A (Performance Indicators and Service Credits);
"KBE Notice" and "KBE End Notice"	has the meaning given at Paragraph 2.13 of Part A;

"Key Business Event" or "KBE"	means an event designated as such by the Authority from time to time;
"Major Failure Performance Threshold"	means, in respect of a KPI, the performance threshold of such KPI, the performance of the Services above or below which would determine the Severity Level of a particular Performance Failure as set out in Paragraph Error! Reference source not found. of Part A;
"Patch Management Policy"	has the meaning as defined by the Policy as held in the Suppliers Policies and Procedures Manual (SPPM)
"Performance Failure"	has the meaning given in Paragraph Error! Reference source not found. of Part A;
"Performance Monitoring Report"	has the meaning given in Paragraph Error! Reference source not found. of Part B;
"Performance Review Meeting"	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Schedule, as further described in Paragraph Error! Reference source not found. of Part B;
"Performance Thresholds"	means. in respect of a KPI, the Minor Failure Performance Threshold, the Major Failure Performance Threshold and the Critical Failure Performance Threshold (as relevant), and "Performance Threshold" means any of them;
"Priority 1" or "P1"	has, in respect of an Incident or Problem (as the case may be), the meaning given in the Supplier Policies and Procedures Manual as at the Effective Date;
"Priority 2 " or "P2"	has, in respect of an Incident or Problem (as the case may be), the meaning given in the Supplier Policies and Procedures Manual as at the Effective Date;
"Priority 3" or "P3"	has, in respect of an Incident or Problem (as the case may be), the meaning given in the Supplier Policies and Procedures Manual as at the Effective Date;
"Priority 4 " or "P4"	has, in respect of an Incident or Problem (as the case may be), the meaning given in the Supplier Policies and Procedures Manual as at the Effective Date;

"Priority 5" or "P5"	has, in respect of an Incident or Problem (as the case may be), the meaning given in the Supplier Policies and Procedures Manual as at the Effective Date;
"Priority Level"	means, in respect of an Incident or Problem, one of Priority 1, Priority 2, Priority 3, Priority 4 or Priority 5;
"Problem"	has the meaning given in ITIL v4, as identified by a Problem record in the ITSM Tool and excluding any data fixes;
"Repeat KPI Failure"	has the meaning given in Paragraph 4.1 of Part A;
"Repeat SPI Failure"	has the meaning given in Paragraph 4.2 of Part A;
"Repeat Failure Count"	has the meaning given in Paragraph 4.3 of Part A;
"Request for Change (RFC)"	has the meaning given in the Change Management policies and procedures set out in the SPPM.
"Service Credit Cap"	means the cap described at Paragraph 6.3 of Part A;
"Service Level Package" or "SLP"	means the service level packages set out in the Standard Service Level Model (being "High Availability", "Enhanced", "Standard" and "Minimum Packages") that determine the Target Performance Level and the Severity Levels for each Performance Indicator (such Target Performance Levels and Severity Levels which are set out in this Schedule, corresponding with the selected Service Level Package);
"Severity Levels"	means, for each Performance Indicator, the bands or levels of performance falling below the Target Performance Level which determine the seriousness of the Supplier's failure, as determined in accordance with the tables in Annex 1 and which are further described in paragraph Error! Reference source not found. of Part A; and
"Social Value Initiatives"	Supplier's initiatives to address the Social Value Model in respect of this Agreement as set out in Table 3 of Annex 1; and
"SVI #"	means, in respect of a Social Value Initiative, the Social Value Initiative, the identifier number of such Social Value Initiative.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.1 Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators) of the Order Form sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 Performance Indicators are to be broken down into Key Performance Indicators and Subsidiary Performance Indicators, the Supplier's performance of and against which the Parties have agreed will be measured.
- 1.3 The Supplier shall perform the Services so that they meet or exceed the applicable Target Performance Levels at all times.
- 1.4 Each Performance Indicator which relates to a Service shall apply and be measured from the relevant Operational Service Commencement Date of the relevant Service(s) to which that Performance Indicator relates (unless otherwise stated in Annex 1).
- 1.5 The Supplier shall monitor its performance of the Services against the Target Performance Level for each Performance Indicator and shall send the Authority a Performance Monitoring Report detailing the level of service and relevant level of performance actually achieved by the Supplier against each Performance Indicator in the relevant Measurement Period in accordance with the provisions of Part B of this Schedule.
- 1.6 The Target Performance Level is the minimum standard of performance which is required by the Authority. A "Performance Failure" will have occurred where the Supplier fails to provide any part of the Services in accordance with and so as to at least meet the relevant Target Performance Levels and to not meet or exceed the Minor KPI Failure Threshold. Performance Failures are further divided into the following Severity Levels:
 - (a) a "Minor KPI Failure" or "Minor SPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Target Performance Level for the relevant Performance Indicator, and the relevant Minor Failure Performance Threshold is met;
 - (b) a "Major KPI Failure" or "Major SPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Target Performance Level for the relevant Performance Indicator, and the relevant Major Failure Performance Threshold is met;
 - (c) a "Critical KPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Target Performance Level for the relevant Performance Indicator and the Critical Failure Performance Threshold (if any) is met. It is acknowledged and agreed by the Supplier that the Critical Failure Performance Threshold level has been set for the most critical of the Services and Performance Indicators, and represents a level of non-performance by the Supplier which would represent a serious Performance Failure.

- 1.7 The Parties acknowledge and agree that not every Performance Indicator has each Severity Level associated with it. The Parties further acknowledge and agree that no Key Performance Indicator shall be modelled in a way which only has a Critical Failure Performance Threshold. For example, a Key Performance Indicator may have a Minor Failure Performance Threshold and a Critical Failure Performance Threshold attributed to it, but not a Critical Failure Performance threshold only.
- 1.8 If the Supplier fails to measure or report on a Performance Indicator in accordance with the requirements placed upon it by Part B of this Schedule, then other than where such failure is due to the Authority not having configured its Information Technology Service Management (ITSM) tool to capture the information required for such reporting (which, as at the Effective Date, is in respect of "Incident Management" and "Problem Management" Performance Indicators), the Supplier shall be deemed to have failed to meet the Target Performance Level for the relevant Performance Indicator in the relevant Measurement Period, unless the Authority otherwise agrees in writing. For the purposes of paragraphs **Error! Reference source not found.** below, Service Points shall accrue to the Supplier in respect of that deemed Performance Failure and following the relevant Service Period at the highest available level associated with that Performance Indicator.
- 1.9 Service Points, and therefore Service Credits, shall accrue for any KPI Failure which occurs in the relevant Measurement Period and shall be calculated in accordance with Paragraphs 3, **Error! Reference source not found.**, **Error! Reference source not found.** and 6 of this Part A
- 1.10 Service Points do not accrue for any SPI Failure which occurs in the relevant Measurement Period, however the relevant Subsidiary Performance Indicator shall be monitored and reported on in accordance with Part B of this Schedule.
- 1.11 Notwithstanding any other provision of this Agreement, any Performance Indicators which are indicated as optional or a placeholder in Annex 1 (*Key Performance Indicators and Subsidiary Performance Indicators*) shall not apply until the Parties have agreed in writing that the Performance Indicator shall apply.

2 CREATION, MODIFICATION, PROMOTION AND DEMOTION OF PERFORMANCE INDICATORS AND KEY BUSINESS EVENTS

- 2.1 Without prejudice to the rules on promotion and demotion below, new Performance Indicators for existing Services may only be added to the Agreement through the Change Control Procedure. Where a new Service is introduced to this Agreement through the Change Control Procedure, appropriate Performance Indicators, Target Performance Levels Major Failure Performance Thresholds and Critical Failure Performance Thresholds may either be proposed by the Authority or failing that, shall be proposed by the Supplier (acting reasonably and in good faith in accordance with Good Industry Practice) as part of its Impact Assessment in relation to the relevant proposed Change (and, so far as possible, taking an approach which is commensurate with the nearest equivalent Performance Indicator(s) already in existence under the Agreement and the best equivalent level which is otherwise available in the market at the relevant time). Such proposed details will be agreed and documented at the same time that the new Service is agreed and documented. Unless otherwise agreed in writing by the Authority, the Supplier shall not be entitled to invoice for any relevant Service Charges for any new Service until the Performance Indicators, Target Performance Levels, Major Failure

Performance Thresholds and Critical Failure Performance Thresholds which are agreed to apply to the same have been defined, agreed and documented.

- 2.2 Once Performance Indicators, Target Performance Levels and Major Failure and Critical Failure Performance Thresholds and Severity Levels have been defined, agreed and documented for a new Service in accordance with paragraph 2.1 above, the Supplier shall be entitled to invoice the Authority in respect of its provision of the new Service from the date on which the new Service commenced. Any such invoice shall take account of and include any Service Credits which would have accrued to the Authority had the new Performance Indicators, Target Performance Levels and Severity Levels (which have been agreed in respect of the relevant Service) been agreed and applicable from and including the date on which the new Service commenced (including deemed failures as provided for in paragraph 1.8 above).
- 2.3 The Authority may remove a Performance Indicator at its sole discretion at any time by giving notice to the Supplier. Such notice and removal will take effect from the end of the relevant applicable Measurement Period or, if sooner, the date following 30 days from the date of the notice (or such other time, if any, as may be specified by the Authority in the relevant notice). The consequence of such removal by the Authority shall be that the removed Performance Indicator will no longer be applicable to future or existing Services and any Service Points which may have been attributed to such a removed Performance Indicator may be reallocated by the Authority amongst the remaining Performance Indicators in accordance with paragraph 3.6 below save that such re-allocation may happen at any time in line with, and shall take effect at the same time as, the removal of the relevant Performance Indicator.
- 2.4 Without prejudice to the ability of the Authority to select between different Service Level Packages in accordance with Paragraph **Error! Reference source not found.** (Performance Indicators) and/or any changes in accordance with Paragraphs **Error! Reference source not found.** and 2.12 below Target Performance Level, Major Failure Performance Threshold, Critical Failure Performance Threshold, and/or a Severity Level may only be changed as a result of the application of:
- (a) the Change Control Procedure;
 - (b) the continuous improvement requirements set out in clause 8 of this Agreement which will be addressed through the Change Control Procedure;
 - (c) the agreed results of a benchmarking exercise which is carried out pursuant to the provisions of Schedule 7.3 (*Benchmarking*) which will be addressed through the Change Control Procedure; or
 - (d) an adjustment under paragraphs **Error! Reference source not found.** and 2.12 below to reflect the designation by the Authority of a Key Business Event.
- 2.5 Any KPI may, at any time, be demoted by the Authority to an SPI at the sole discretion of the Authority and by sending written notice to the Supplier. Any such demotion shall take effect from the end of the relevant applicable Measurement Period or, if sooner, the date falling 30 days from the date of the relevant notice (or such other time, if any, as may be specified by the Authority in the relevant notice) . Where a KPI is demoted to a SPI, Service Points shall no longer accrue where the Supplier fails to meet or exceed the Target Performance Level in respect of such Performance Indicator. All other attributes (including the relevant Target Performance Level and Severity Levels) of the KPI shall remain unaffected. Any Service Points

which may have been attributed to such a demoted KPI may be re-allocated by the Authority amongst the remaining Performance Indicators in accordance with paragraph 3.6 below, save that such re-allocation may happen at any time and in line with, and shall take effect at the same time as, the demotion of the relevant KPI.

- 2.6 Subject to the remaining provisions of this paragraph 2.6, and without prejudice (and in addition) to paragraph 2.72.7 below, a SPI may be promoted to a KPI at the sole discretion of the Authority by sending written notice to the Supplier at least one relevant Measurement Period in advance of any such promotion. The promotion of an SPI to a KPI shall take effect at the start of the next Measurement Period to commence for that promoted SPI following service of notice in writing by the Authority in accordance with this paragraph 2.6. The Parties agree that:
- (a) no more than one (1) SPI can be promoted to a KPI in any one Measurement Period but without prejudice and in addition to any promotion under paragraph 2.7 below;
 - (b) no promoted KPI can be demoted to an SPI for three (3) full relevant Measurement Periods (commencing with the first Measurement Period to occur for the new KPI following service of notice in writing by the Authority in accordance with this paragraph 2.6);
 - (c) promoted KPIs shall be liable to accrue Service Points in accordance with the provisions of paragraph **Error! Reference source not found.** (and the Authority may in the notice of promotion confirm how Service points are to be allocated to the relevant promoted KPI and, where relevant, moves from other KPIs); and
 - (d) to the extent that it does not already have one, the Authority may designate the Major Failure Performance Threshold(s) and/or Critical Failure Performance Threshold(s) which will apply to the newly promoted KPI, provided that where such designation requires the implementation of new measures by the Supplier, the thresholds and their corresponding impact shall be agreed via the Change Control Procedure.
- 2.7 In addition to any promotion under paragraph 2.6 above, the Authority shall be entitled to promote a SPI to a KPI when the SPI has accrued a Repeat SPI Failure (as further outlined in paragraph **Error! Reference source not found.**). Where the relevant SPI is promoted to a KPI (which shall be conducted in accordance with paragraph 2.6), the Repeat Failure Count which applied to the SPI shall be reset to zero (0) (i.e. as if there had been no preceding Performance Failure in respect of the newly promoted KPI).
- 2.8 The Parties are committed to ensuring that certain business critical, public-facing business processes or events operate effectively so that the Authority's reputation is protected and have therefore agreed to focus more management attention on these in the form of Key Business Events. Therefore, the Parties shall agree, introduce, monitor and measure KBEs in accordance with the arrangements set out in paragraphs 2.9 to **Error! Reference source not found.** below.
- 2.9 On an annual basis, the Authority shall select up to ten (10) KBEs to be measured and monitored. The Authority shall nominate the ten (10) KBEs by the 31 January immediately preceding the beginning of the tax year (which commences on 6 April each year) in which they are to operate. KBE Measures for each KBE, and any corresponding impact on the Services or Charges, will be agreed no less than six (6) weeks in advance of the beginning of that KBE.

- 2.10 The “**KBE Measures**” for a KBE are reporting metrics of the KBE against which the Authority requests the Supplier to report, which will include objective measures of activities which are important in ensuring the attainment of the Authority’s business objectives, but which may not relate to the Supplier’s performance of this Agreement and which are not Performance Indicators under this Agreement. Any adjustments to the Performance Indicators during a KBE shall be made in accordance with Paragraph 2.12 of this Part A (*Performance Indicators and Service Credits*) of this Schedule.
- 2.11 The Parties shall further develop the KBE Measures of KBEs in the following category: objective measures in the form of mechanically measurable sets of success criteria linked into the Authority's business objectives.
- 2.12 The Parties recognise that for certain KBEs, adjustments may need to be made to the Performance Indicators during a KBE and outside of the process described in Paragraph 2.9. Any adjustments will be agreed in advance of their application during the KBE and managed by the Authority in accordance with this Schedule and, where necessary, via the Change Control Procedure.
- 2.13 The Authority on occasion may declare a new KBE to meet with the Authority’s business critical responsibilities. The Authority may at any time give reasonable notice in writing to the Supplier to declare that a particular event relating to the business of the Authority is a Key Business Event (“**KBE Notice**”), following which the Parties shall agree through the Change Control Procedure any KBE Measures or adjustments which will apply during such KBE by a reasonable period (taking into account the nature of the Authority and the relevant requirements of the KBE) in advance of its commencement. Such KBE Notice may include:
- (a) the date on which the KBE will take effect;
 - (b) the end date of the KBE; and
 - (c) the relevant duration of which any agreed adjustments will apply.
- 2.14 In the event that the Authority serves a KBE Notice on the Supplier in accordance with paragraph 2.13 above, the Supplier agrees that the relevant adjustments shall apply to this Agreement for any duration set out in the notice or, if no such duration is specified, until the Authority provides a further notice in writing to the Supplier confirming that the relevant Key Business Event has ended and the relevant adjustments are no longer required (“**KBE End Notice**”). The KBE End Notice shall take effect meaning that the relevant adjustments shall (without prejudice to any Changes to the Agreement which may have been agreed between the Parties following the service of the relevant KBE Notice) cease to apply for the purposes of this Agreement no sooner than 20 Working Days from the date of the relevant KBE End Notice.

3 SERVICE POINTS

- 3.1 A points based system will be used to calculate any service credits which may be due. Annex 1 sets out the relevant points which would be accumulated for failures of each threshold per KPI. Refer to the formula shown below at section 4.7 to see how this calculation will present.
- 3.2 If the level of performance of the Supplier during a Measurement Period meets or exceeds the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.

- 3.3 If the level of performance of the Supplier during a Measurement Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Annex 1 (and as such points may be adjusted in accordance with this Schedule).
- 3.4 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the relevant number as set out in Annex 1 (in its form at the relevant time and as may be adjusted in accordance with this Schedule and the Agreement) depending on whether the KPI Failure is a Minor KPI Failure, a Major KPI Failure or a Critical KPI Failure, unless the KPI Failure is a Repeat KPI Failure in which case the provisions of paragraph **Error! Reference source not found.** shall also apply. For the avoidance of doubt, where a KPI only has Service Points associated with a Minor KPI failure and/or a Major KPI Failure, then in the event of a Critical KPI Failure against that KPI, Service Points shall still accrue to the Supplier, and at the highest available amount associated with that KPI.
- 3.5 It is acknowledged and agreed that the total number of Service Points that may be allocated across all KPIs for shall not exceed 150. In calculating this figure, the Service Points that are deemed to be allocated to any one KPI shall be the maximum Service Points that can be awarded in respect of a Performance Failure relating to that Key Performance Indicator within the Measurement Period. Annex 1 to this Schedule sets out the allocation of Service Points across the KPIs and shall be updated from time to time in accordance with the provisions of this Schedule.

Example: if, for a particular KPI, a Minor KPI Failure is allocated 10 Service Points and a Major KPI Failure is allocated 20 Service Points, the total Service Point allocation to that KPI for the purposes of this paragraph (and assessing the amount from the total mentioned above which is allocated to that KPI) would be 20.

- 3.6 The Authority shall be entitled to redistribute Service Points between KPIs (including newly promoted KPIs and from demoted or removed KPIs) at its sole discretion by giving at least one (1) months' notice in writing to the Supplier without prejudice to any time periods applicable under paragraph 3.4, 2.6 or 3.7 but without having to follow the Change Control Procedure, subject to the following restrictions:
- (a) the maximum number of Service Points that can be allocated to any one (1) single KPI is 30 (without prejudice to the application of Paragraph **Error! Reference source not found.** below in relation to Repeat Failures);
 - (b) no more than 60 Service Points can be reallocated across all of the KPIs in any one Measurement Period (save for any reallocation as a result of a promotion under paragraph 2.6 above and/or as a result of a Key Business Event as described at paragraphs 2.8 to 2.14 above)
 - (c) any such reallocation shall take effect at the start of the next Measurement Period for the relevant KPIs commencing at least one (1) month following service of notice in writing by the Authority in accordance with this paragraph 3.6; and
 - (d) the total Service Points allocated cannot (without prejudice to the application of Paragraph **Error! Reference source not found.** below) exceed the limit specified in paragraph 3.5, although not all Service Points need to be allocated at all times (For example only and without prejudice to the formality of this section, a KPI which is

measured on a monthly basis may have 10 Service Points deducted from it and moved to a KPI which is measured on a quarterly basis. As the KPI measured on a quarterly basis is on a different measurement cycle to the monthly KPI, those Service Points will not be relevant for accrual until the end of the relevant quarterly Measurement Period). Any unallocated Service Points are available to be allocated by HMRC in addition to the limit specified in 3.6(b).

3.7 For the avoidance of doubt:

- (a) Service Points will be accrued by the Supplier based on the relevant Performance Failures which have occurred against the Performance Indicators and
- (b) Service Points accrued by the Supplier for all Performance Failures in a Service Period shall be added together to give the Total Service Points (TSP below) used in the calculation to provide the total Service Credit due from the Supplier in respect of that Service Period. Refer to the formula in paragraph 6.5.

4 REPEAT KPI FAILURES AND RELATED KPI FAILURES

- 4.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any consecutively subsequent such KPI Failure of the same Key Performance Indicator shall be a **"Repeat KPI Failure"**. For the avoidance of doubt, the same event crossing multiple Measurement Periods shall not constitute a Repeat KPI Failure.
- 4.2 If a SPI Failure occurs in respect of the same Subsidiary Performance Indicator in any two or more consecutive Measurements Periods, the second and any consecutively subsequent SPI Failure of the same Key Performance Indicator shall be a **"Repeat SPI Failure"**. The Supplier shall track and report on the current number of sequential Repeat SPI Failures for each Subsidiary Performance Indicator.
- 4.3 In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat KPI Failures for each KPI (the **"Repeat Failure Count"**). For example, if a KPI Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).
- 4.4 The Repeat Failure Count shall be a count of the number of sequential Repeat KPI Failures (being failures to meet the relevant Target Performance Levels). The severity of the Performance Failure shall be irrelevant to the Repeat Failure Count. Any Minor KPI Failures, Major KPI Failures and Critical KPI Failures shall each be counted as one increment of the Repeat Failure Count.
- 4.5 When, in a Measurement Period, a KPI with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).
- 4.6 Without prejudice to the Authority's other rights and remedies, there shall be no upper limit to the Repeat Failure Count. However, a Repeat Failure Count of four (4) or more shall be deemed to be a Critical KPI Failure by the Supplier against the relevant KPI.
- 4.7 In addition to the Service Points incurred via a Performance Failure for any particular measurement period, repeat failures will incur additional Service Points with an additional 50%

of the current month's relevant points for the duration of any failures. Such repeat failure calculations will only apply to an individual Performance Indicator i.e. failures for one Performance Indicator will not cause a repeat failure for other Performance Indicator. Accordingly, the number of Service Points that shall accrue to the Supplier in respect of a Measurement Period and for a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P + (P * RFC [* 0.5])$$

where:

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

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 (as updated) depending on whether the relevant Repeat KPI Failure is a Minor KPI Failure, a Major KPI Failure or a Critical KPI Failure and the applicable Service Level Package; and

RFC = the Repeat Failure Count.

Example Repeat KPI Failure

For example, for a Service Level with Service Points of 15 (minor) and 20 (major):

Month 1: Minor Service Level Failure = 15 Service Points

Month 2: Minor Service Level Failure = 22.5 Service Points
(15 + 15/2 x 1 repeat failure month)

Month 3: Major Service Level Failure = 40 Service Points
(20 + 20/2 x 2 repeat failure months)

Month 4: Minor Service Level Failure = 37.5 Service Points
(15 + 15/2 x 3 repeat failure months)

Month 5: No Service Level Failure for that Service Level = 0 Service Points

5 REMEDIES

- 5.1 Without prejudice to the Authority's other rights and remedies in this Agreement, the Parties acknowledge and agree that Critical KPI Failures and Repeat KPI Failures (at the level referred to at paragraph 4.6 above) represent a level of non-performance that would entitle the Authority to invoke its termination rights set out in clause 33.1(b) of this Agreement.
- 5.2 The Parties agree that Service Credits are a non-exclusive remedy and shall be without prejudice to any rights or remedies of the Authority under this Agreement or at Law including any entitlement that the Authority may have to damages and/or to terminate.

5.3 The provisions of clause 34 of this Agreement shall apply in respect of any failure by the Supplier to provide the Services in accordance with the Target Performance Levels which would not have occurred but for an Authority Cause.

5.4 Once any necessary allocation of Service Points has been determined and made, the Parties shall make the necessary adjustments to the next invoice to be raised by the Supplier pursuant to Schedule 7.1 (*Charges and Invoicing*).

6 SERVICE CREDITS AND AMOUNT OF RISK

6.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Credits are applied to invoices.

6.2 The maximum Service Credits which shall be payable by the Supplier, irrespective of the number of Service Points accrued, shall not exceed the Service Credit Cap.

6.3 The Service Credit Cap shall be 15% of the monthly Service Charges for the Services, excluding any Charges for Projects. For the avoidance of doubt, the operation of a Service Credit Cap shall not affect the continued accrual of Service Points where relevant in accordance with the provisions of this Schedule (for the purposes of calculating whether certain thresholds within this Agreement have been reached).

6.4 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period and by reference to those Key Performance Indicators for which the Measurement Period ended in or at the end of that Service Period.

6.5 For each Service Period:

(a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period; and

(b) the total Service Credits applicable in respect of the Service Period shall be calculated in accordance with the following formula: $SC = TSP \times X \times AC \times SCC$ where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is 1%;

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

SCC is the Service Credit Cap percentage (15%)

6.6 The Authority shall use the Performance Monitoring Reports, as defined in section 1.1 of this schedule, provided pursuant to Part B, amongst other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

- 6.7 It is acknowledged and agreed that, where in accordance with this Schedule, a change is made to the Performance Indicators without needing to go through the Change Control Procedure, including (but not limited to) a change in the allocation of Service Points and/or the promotion or demotion of a SPI or KPI, the Authority may issue a revised version of Annex 1 reflecting such changes and that version shall, as between the Parties, apply for the purposes of this Schedule from that point.

7 SOCIAL VALUE INITIATIVES

- 7.1 Without prejudice to Clause 13 (Change), but notwithstanding any other provision in this Agreement, in undertaking the Social Value Initiatives, the Supplier shall comply with the Laws that apply to it, and no provisions relating to the Social Value Initiatives shall apply if they, or their manner of delivery or reporting against their fulfilment, are inconsistent with the Supplier's obligations under applicable Law. The Supplier shall notify the Authority if it considers that any provisions relating to the Social Value Initiatives, or their manner of delivery or reporting against their fulfilment, are inconsistent with the Supplier's obligations under applicable Law, in which case the Parties shall work together to agree such changes to the Social Value Initiatives as are necessary for compliance with applicable Law, both acting reasonably. Any variations to the Social Value Initiatives agreed in accordance with this Paragraph 7.1 shall be implemented in accordance with the Change Control Procedure.
- 7.2 The reporting of Social Value Initiatives is set out in Schedule 8.2 (*Reports and Records Provision*), provided that under no circumstances will the Supplier be required to disclose any Personal Data or other information specific to any member of Supplier Personnel, and all reporting will be conducted on an aggregated, anonymised basis within the requirements of applicable Laws.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:

- (a) a report to the Authority Representative, in a format agreed with the Authority, which summarises the performance by the Supplier against each of the applicable Target Performance Levels as more particularly described in Paragraph 1.2 of this Part B (the "Performance Monitoring Report"; and
- (b) a report created by the Supplier, in a format agreed with the Authority as per, to the Authority's senior responsible officer which summarises the Supplier's performance over the relevant Service Period as more particularly described in paragraph 1.3 (the "**Balanced Scorecard Report**") below.

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information, provided that the Authority has completed its configuration activities in its ITSM tool to be able to capture the information required for such reporting:

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period (where this can be calculated for the relevant Performance Indicator if the Measurement Period is not the same as the Service Period) and the relevant Measurement Period which has just ended, and that achieved over the previous three (3) relevant Measurement Periods;
- (b) a summary of all Performance Failures that occurred during or which have occurred by the end of the Service Period;
- (c) the Severity Level of each Performance Failure which occurred during the Service Period or by the end of it;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Critical KPI Failures occurring during or by the end of the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan Processes, as defined in Clauses 27.4 (Submission of the draft Rectification Plan) to 27.9 (Contract of the Rectification Plan), in respect of any Performance Failures, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

- (g) for any Repeat KPI Failures and/or Repeat SPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (j) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- (k) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- (l) a rolling total of the number of Performance Failures that have occurred over or by the end of the past six Service Periods, including any Repeat Failure Counts; and
- (m) the amount of Service Credits that have been incurred by the Supplier over or by the end of the past six Service Periods.

1.2 If the Supplier reasonably considers that an event or circumstance which may adversely impact the calculation of a Performance Indicator:

- (a) would not have occurred but for the acts or omissions of the Authority or any Other Supplier, or the behaviour of any systems or hardware outside of the Supplier's control

then as part of its Performance Monitoring Report the Supplier shall be entitled to submit a mitigation request (with evidence) to exclude the relevant Incident, Problem or other event that is measured by the impacted Performance Incident from the measurement of the impacted Performance Indicator. If the Authority, acting reasonably, agrees to such request, then such Incidents will be excluded from the measurement of impacted Performance Indicators (such process in this Paragraph 1.2 the "Attribution Process" and further described in paragraph 1.4).

Balanced Scorecard Report

1.3 The Balanced Scorecard Report shall be presented in the form of a point-in-time snapshot report uploaded to the Virtual Library and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period of the specific measures that the Parties shall agree in writing as part of Transition, including details of the following in relation to those measures so agreed (as relevant):

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;

- (e) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
 - (f) Milestone trend chart, showing performance of the overall programme;
 - (g) sustainability and energy efficiency indicators, for example energy consumption and recycling performance; and
 - (h) Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5. The Supplier acknowledges and agrees that the Authority may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular Performance Indicator. In the event of any dispute or difference between the Supplier's assessment and the Authority's assessment in respect of a Performance Indicator the Authority's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Supplier shall be entitled to subsequently escalate any remaining dispute or difference to the Operational Performance Board in accordance with Schedule 8.1.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.
- 1.7 In addition to the requirements above and elsewhere in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier after each Operational Service Commencement Date.
- 1.8 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well historic Performance Monitoring Reports and historic point-in-time snapshots of Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line in the Virtual Library and are capable of being printed

2 PERFORMANCE VERIFICATION

The Authority reserves the right to verify any aspect of the Services and the Supplier's performance under this Agreement against the Target Performance Levels.

ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators Tables) of the Order Form

SCHEDULE 2.3
STANDARDS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

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

2 GENERAL

- 2.1 Throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Buyer’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Buyer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Buyer’s receipt, of the Services is explained to the Buyer (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Buyer and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

4 OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/openstandards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Contract, an illustration of

such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

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

5 TECHNOLOGY ARCHITECTURE STANDARDS

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

6 ACCESSIBLE DIGITAL STANDARDS

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

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

7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

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

- (a) ITIL v4;
- (b) ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- (c) ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- (d) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
- (e) ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.

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

8 ENVIRONMENTAL REQUIREMENTS

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

9 HARDWARE SAFETY STANDARDS

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
 - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
 - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

ANNEX: ENVIRONMENTAL REQUIREMENTS

DEFINITIONS

1. In this Annex, the following definitions shall apply:
- | | |
|---------------------------------|--|
| “Permitted Item” | means those items which are permissible under this Contract to the extent set out in Table B of Attachment 2.3 (Environmental Requirements) of the Order Form; |
| “Prohibited Items” | means those items which are not permissible under this Contract as set out at Table A of Attachment 2.3 (Environmental Requirements) of the Order Form; |
| “Sustainability Reports” | written reports to be completed by the Supplier containing the information outlined in Table C of Attachment 2.3 (Environmental Requirements) of the Order Form; |

“Waste Hierarchy”

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

- (1) Prevention – by using less material in design and manufacture. Keeping products for longer;
- (2) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
- (3) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
- (4) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and (5) Disposal - Landfill and incineration without energy recovery.

ENVIRONMENTAL REQUIREMENTS

2. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to this Contract.
3. The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
4. In performing its obligations under this Contract the Supplier shall to the reasonable satisfaction of the Buyer:
 - 4.1. demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Buyer’s reasonable questions;
 - 4.2. prioritise waste management in accordance with the Waste Hierarchy;
 - 4.3. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - 4.4. ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
 - 4.5. inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Contract is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Contract is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
 - 4.6. minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and

- 4.7. reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 5. The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
- 6. The Supplier shall not provide to the Buyer Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 7. The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
 - 7.1. it is a Permitted Item; or
 - 7.2. the use is primarily related to the management of the Supplier’s own facilities or internal operations as opposed to the provision of Services.
- 8. The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Contract and provide the Sustainability Report to the Buyer on the date and frequency outlined in Table C of this Annex.
- 9. The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

TABLE A – Prohibited Items
Attachment 2.3 of the Order Form

TABLE B – Permitted Items
Attachment 2.3 of the Order Form

TABLE C – Sustainability Reports
Attachment 2.3 of the Order Form

SCHEDULE 2.4

SECURITY MANAGEMENT

PART A – SECURITY ASSURANCE

1. Definitions

In this Schedule:

“Anti-Malicious Software”		means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”		(a) an event that results, or could result, in: (b) any unauthorised access to or use of the Buyer Data, the Services and/or the Information Management System; and/or (c) 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;
“Certification Requirements”		means the information security requirements set out in Paragraph 6;
“CHECK Provider”	Service	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
“CREST Provider”	Service	means a company with a SOC Accreditation from CREST International;
“Higher Risk Subcontractor”		means a Sub-contractor that Processes Buyer Data, where that data includes either: (a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); or (b) Special Category Personal Data;

“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Buyer Data, the Buyer, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;
“Information Management System”	means <ul style="list-style-type: none"> (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors 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 Approval Statement”	means a notice issued by the Buyer which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that: <ul style="list-style-type: none"> (a) the Buyer is satisfied that the identified risks have been adequately and appropriately addressed; (b) the Buyer has accepted the residual risks; and (c) the Supplier may use the Information Management System to Process Buyer Data;
“IT Health Check”	has the meaning given in Paragraph 7.1;
“Medium Risk Subcontractor”	means a Sub-contractor that Processes Buyer Data, where that data <ul style="list-style-type: none"> (a) includes the Personal Data of between 100 and 999 individuals

	(inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); and
(b)	does not include Special Category Personal Data;
“Personal Data Processing Statement”	<p>means a document setting out:</p> <ul style="list-style-type: none"> (a) the types of Personal Data which the Supplier and/or its Subcontractors Processes or will Process under this Contract; (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Contract; (c) the nature and purpose of such Processing; (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Contract; and (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Contract against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;
“Process”	means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
“Required Changes Register”	mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;
“Risk Register”	is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Buyer for approval in accordance with Paragraph 4;
“Security Management Plan”	<p>means the document prepared by the Supplier using the template in Annex 3, comprising:</p> <ul style="list-style-type: none"> (a) the Information Assurance Assessment; (b) the Personal Data Processing Statement; (c) the Required Changes Register; and (d) the Incident Management Process;
Special Category GDPR; Personal Data	means the categories of Personal Data set out in article 9(1) of the

2. Introduction

2.1 This Schedule sets out:

2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Buyer Data and the Information Management System;

2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Buyer Data;

2.1.3 The security requirements in Annex 1, with which the Supplier must comply;

2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term;

2.1.5 the Supplier's obligations to:

(a) return or destroy Buyer Data on the expiry or earlier termination of this Contract; and

(b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and

(c) report Breaches of Security to the Buyer.

3. Principles of Security

3.1 The Supplier acknowledges that the Buyer places great emphasis on the confidentiality, integrity and availability of the Buyer Data and, consequently on the security of:

3.1.1 the Sites;

3.1.2 the IT Environment;

3.1.3 the Information Management System; and

3.1.4 the Services.

3.2 Notwithstanding the involvement of the Buyer in assessing the arrangements which the Supplier implements to ensure the security of the Buyer Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:

3.2.1 the security, confidentiality, integrity and availability of the Buyer Data whilst that Buyer Data is under the control of the Supplier or any of its Sub-contractors; and

3.2.2 the security of the Information Management System.

3.3 The Supplier shall:

3.3.1 comply with the security requirements in Annex 1; and

1.1.1 ensure that each Sub-contractor that Processes Buyer Data complies with the Sub-contractor Security Requirements.

3.4 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 reasonable notice.

4. Information Security Approval Statement

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

4.2 The Supplier may not use the Information Management System to Process Buyer Data unless and until:

4.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and

4.2.2 the Buyer has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.

4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Subcontractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Buyer Data and the Information Management System.

4.4 The Supplier shall prepare and submit to the Buyer within 20 Working Days of the date of this Contract, the Security Management Plan, which comprises:

4.4.1 an Information Assurance Assessment;

4.4.2 the Required Changes Register;

4.4.3 the Personal Data Processing Statement; and

4.4.4 the Incident Management Process.

4.5 The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:

4.5.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Buyer Data; or

4.5.2 a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.

4.6 If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Buyer's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Buyer for review within 10 Working Days or such other timescale as agreed with the Buyer.

4.7 The Buyer may require, and the Supplier shall provide the Buyer and its authorised representatives with:

4.7.1 access to the Supplier Personnel;

4.7.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and

4.7.3 such other information and/or documentation that the Buyer or its authorised representatives may reasonably require,

to assist the Buyer to establish whether the arrangements which the Supplier and its Subcontractors have implemented in order to ensure the security of the Buyer Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Buyer in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Buyer with the access that it requires within 24 hours of receipt of such request.

5. Compliance Reviews

5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.

5.2 The Supplier shall notify the Buyer within 2 Working Days after becoming aware of:

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

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

5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;

5.2.4 a change in the threat profile;

5.2.5 a significant change to any risk component;

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

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

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

5.3 Within 10 Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Buyer for review and approval.

5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

6. Certification Requirements

6.1 The Supplier shall be certified as compliant with:

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

6.1.2 Cyber Essentials PLUS,

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

6.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:

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

6.2.2 Cyber Essentials PLUS,

and shall provide the Buyer with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Buyer Data.

6.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.

6.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Buyer Data:

6.4.1 securely destroys Buyer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

6.4.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Buyer.

6.5 The Supplier shall provide the Buyer with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Subcontractor (as applicable) may carry out the secure destruction of any Buyer Data.

6.6 The Supplier shall notify the Buyer as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Buyer, shall or shall procure that the relevant Sub-contractor shall:

6.6.1 immediately ceases using the Buyer Data; and

6.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Buyer Data in accordance with the requirements set out in this Paragraph.

6.6.3 The Buyer may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7. Security Testing

7.1 The Supplier shall, at its own cost and expense procure and conduct:

7.1.1 testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("IT Health Check"); and

7.1.2 such other security tests as may be required by the Buyer,

7.2 The Supplier shall complete all of the above security tests before the Supplier submits the Security Management Plan to the Buyer for review in accordance with Paragraph 4; and it shall repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to the Buyer for review in accordance with this Paragraph.

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

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

7.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Buyer with a copy of the full report;

7.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:

(a) prepare a remedial plan for approval by the Buyer (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:

(i) how the vulnerability will be remedied;

(ii) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:

(A) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "medium";

- (B) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
 - (C) within 10 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
 - (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Buyer, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (b) comply with the Vulnerability Correction Plan; and
 - (c) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 7.4 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.
- 7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within 2 Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Buyer with a copy of the test report and:
- 7.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and
 - 7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Buyer.
- 7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Buyer from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.
- 7.7 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

8. Security Monitoring and Reporting

- 8.1 The Supplier shall:
 - 8.1.1 monitor the delivery of assurance activities;

- 8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;
- 8.1.3 agree a document which presents the residual security risks to inform the Buyer's decision to give approval to the Supplier to Process, store and transit the Buyer Data;
- 8.1.4 monitor security risk impacting upon the operation of the Service;
- 8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
- 8.1.6 agree with the Buyer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Buyer within 20 Working Days of Effective Date.

9. Malicious Software

- 9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Buyer Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:
 - 9.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Buyer Data (whilst the Buyer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
 - 9.3.2 by the Buyer, in any other circumstance.

10. Breach of Security

- 10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.
- 10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:
 - 10.2.1 Immediately take all reasonable steps necessary to:
 - (a) minimise the extent of actual or potential harm caused by such Breach of Security;

- (b) remedy such Breach of Security to the extent possible;
 - (c) apply a tested mitigation against any such Breach of Security; and
 - (d) prevent a further Breach of Security in the future which exploits the same root cause failure;
- 10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Buyer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.
- 10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Buyer.

Annex 1: Security Requirements

1. Security Classification of Information

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

2. End User Devices

- 2.1 The Supplier shall ensure that any Buyer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.
- 2.2 The Supplier shall ensure that any device which is used to Process Buyer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-devicessecurity>.

3. Networking

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

4. Personnel Security

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must

include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.

- 4.2 The Buyer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Buyer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Buyer Data or data which, if it were Buyer Data, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Buyer Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Buyer Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Buyer Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Buyer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Buyer Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Buyer Data ("phishing").

5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.

5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.

5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Buyer on request.

6. Data Destruction or Deletion

The Supplier shall:

6.1 prior to securely sanitising any Buyer Data or when requested the Supplier shall provide the Government with all Buyer Data in an agreed open format;

6.2 have documented processes to ensure the availability of Buyer Data in the event of the Supplier ceasing to trade;

6.3 securely erase in a manner agreed with the Buyer any or all Buyer Data held by the Supplier when requested to do so by the Buyer;

6.4 securely destroy in a manner agreed with the Buyer all media that has held Buyer Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Buyer; and

6.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. Audit and Protective Monitoring

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

7.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the Information Management System.

7.3 The retention periods for audit records and event logs must be agreed with the Buyer and documented in the Security Management Plan.

8. Location of Buyer Data

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

9. Vulnerabilities and Corrective Action

- 9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Buyer Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
 - 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
 - 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:
 - 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 9.4.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Buyer in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. Secure Architecture

10.1 The Supplier shall design the Information Management System in accordance with:

10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;

10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

- (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Buyer Data and/or the Buyer System that those personnel be subject to appropriate security screening and regular security training;
- (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;

- (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Buyer to securely manage the Buyer's use of the Service;
- (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Buyer with the audit records it needs to monitor access to the Service and the Buyer Data held by the Supplier and/or its Sub-contractors; and
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

Annex 2: Security Requirements for Sub-contractors

1. Application of Annex

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

2 Designing and managing secure solutions

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

3 Data Processing, Storage, Management and Destruction

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

2. Personnel Security

- 3.3 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at

<https://www.gov.uk/government/publications/government-baseline-personnel-securitystandard>.

- 3.4 The Sub-contractor must, if the Buyer requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Buyer Data containing Personal Data above certain volumes specified by the Buyer, or containing Special Category Personal Data.
- 3.5 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

3. End User Devices

- 3.6 The Sub-contractor shall ensure that any Buyer Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.
- 3.7 The Supplier shall ensure that any device used to Process Buyer Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

4. Networking

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

4 Patching and Vulnerability Scanning

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

5 Third Party Sub-contractors

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

Annex 3:

Security Management Plan Template

Security Management Plan Template (Accreditation)

[Project/Service and Supplier Name]

1 Executive Summary

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

2 System Description

2.1 Background

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

2.2 Organisational Ownership/Structure

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

2.3 Information assets and flows

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

2.4 System Architecture

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

2.5 Users

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

2.6 Locations

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

2.7 Test and Development Systems

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

2.8 Key roles and responsibilities

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

3 Risk Assessment

3.1 Accreditation/Assurance Scope

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

3.2 Risk appetite

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

3.3 Business impact assessment

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

3.4 Risk assessment

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

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	Very low
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level

R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	<p>C12. System administrators hold SC clearance.</p> <p>C13. All changes to user information are logged and audited.</p> <p>C14. Letters are automatically sent to users home addresses when bank details are altered.</p> <p>C15. Staff awareness training</p>	Low
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3.5 Controls

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

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

3.6 Residual risks and actions

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

4 In-service controls

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

- a) information risk management and timescales and triggers for a review;
- b) contractual patching requirements and timescales for the different priorities of patch;
- c) protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;
- d) configuration and change management;
- e) incident management;
- f) vulnerability management;
- g) user access management; and
- h) data sanitisation and disposal.>

5 Security Operating Procedures (SyOPs)

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

6 Major Hardware and Software and end of support dates

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

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

7 Incident Management Process

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

8 Security Requirements for User Organisations

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

9 Required Changes Register

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

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

10 Personal Data Processing Statement

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

11 Annex A. ISO27001 and/or Cyber Essential Plus certificates

<Any certifications relied upon should have their certificates included>

12 Annex B. Cloud Security Principles assessment

<A spreadsheet may be attached>

13 Annex C. Protecting Bulk Data assessment if required by the Buyer/Customer *<A spreadsheet may be attached>*

14 Annex E. Latest ITHC report and Vulnerability Correction Plan

Annex 4

Information Management System

Attachment 2.4 (Information Management System) of the Order Form

SCHEDULE 2.5

NOT USED

SCHEDULE 3
BUYER RESPONSIBILITIES

1 INTRODUCTION

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

2 GENERAL OBLIGATIONS

The Buyer shall:

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

3 NOTE USED

Attachment 3 (Buyer Responsibilities) of the Order Form

SCHEDULE

4.1

SUPPLIER SOLUTION

Attachment 4.1 (Supplier Solution) of the Order Form

SCHEDULE

4.2

COMMERCIALLY SENSITIVE INFORMATION

Attachment 4.2 (Commercially Sensitive Information) of the Order Form

SCHEDULE

4.3

NOTIFIED KEY SUB-CONTRACTORS

Attachment 4.3 (Notified Key-Subcontractors) of the Order Form

SCHEDULE

4.4

THIRD PARTY CONTRACTS

Attachment 4.4 (Third Party Contract) of the Order Form

SCHEDULE 5

SOFTWARE

THE SOFTWARE

Attachment 5 (Software) of the Order Form

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

[Supplier letterhead]

[insert Buyer name
and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

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

In accordance with Clause 17.4(b) of the Contract we confirm that:

1. the Buyer is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences"); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Buyer may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.4(b) of the Contract. Yours faithfully, Signed:

On behalf of [name of the Supplier]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT THIS

AGREEMENT is made on [date] 20

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Contract, unless the context otherwise requires:

“Confidential Information”

means:

(a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

- (i) the Supplier; or
- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Buyer pursuant to this Contract to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above, but not including any Information that:

(a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;

(b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or

(c) was independently developed without access to the Information;

"Information"

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

"Sub-licence"

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

1.2 In this Contract:

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

2 Confidentiality Obligations

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

- (a) treat all Confidential Information as secret and confidential;

- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Contract;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

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

- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Contract. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.
- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

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

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

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

(b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]
[Address]

Attention: []

6 Governing law

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

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

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

For and on behalf of [name of Supplier]

Signature: _____ Date:

Name: _____ Position:

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

Signature: _____ Date:

Name: _____ Position:

SCHEDULE 6.1
IMPLEMENTATION PLAN

1 INTRODUCTION

1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2 OUTLINE IMPLEMENTATION PLAN

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

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Buyer Cause*)).

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

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

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

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of each design document;
 - (ii) the completion of the build phase;
 - (iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
 - (iv) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months, together with a high level plan for the rest of the programme, in conformity with the Buyer Requirements;
- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Buyer.

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

- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - 1. details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
- (i) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
- (ii) any other work in progress in relation to the Detailed Implementation Plan; and
- (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Buyer shall:

- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Buyer.

3.5 If the Buyer rejects the draft Detailed Implementation Plan:

- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.6 If the Buyer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Buyer's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

4.1 Following the approval of the Detailed Implementation Plan by the Buyer:

- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Buyer every 3 months starting 3 months from the Effective Date;

- (b) without prejudice to Paragraph 4.1(a), the Buyer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Buyer

within 20 Working Days of receiving such a request from the Buyer (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

- (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Buyer not less than 5 Working Days in advance of each meeting of the Service Management Board.

4.2 Save for any amendments which are of a type identified and notified by the Buyer (at the Buyer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Buyer Cause*).

4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Buyer.

5 GOVERNMENT REVIEWS

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

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

Attachment 6.1 (Outline Implementation Plan) of the Order Form

SCHEDULE 6.2
TESTING PROCEDURES

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: <ul style="list-style-type: none"> (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”	any person appointed by the Buyer pursuant to Paragraph 10.1; and

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

2 RISK

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

- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
- (b) affect the Buyer's right subsequently to reject:

1. all or any element of the Deliverables to which a Test Certificate relates; or

- (i) any Milestone to which the Milestone Achievement Certificate relates.

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

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

3 TESTING OVERVIEW

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

3.2 The Supplier shall not submit any Deliverable for Testing:

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

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

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

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

4 TEST STRATEGY

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

4.2 The final Test Strategy shall include:

- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
- (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
- (c) the method for mapping the expected Test results to the Test Success Criteria;
- (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- (e) the procedure to be followed to sign off each Test;
- (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- (g) the names and contact details of the Buyer's and the Supplier's Test representatives;
- (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Buyer and/or third party involvement in the conduct of the Tests;
- (i) the technical environments required to support the Tests; and
- (j) the procedure for managing the configuration of the Test environments.

5 TEST PLANS

5.1 The Supplier shall develop Test Plans and submit these for the approval of the Buyer as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Plan shall include as a minimum:

- (a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
- (b) a detailed procedure for the Tests to be carried out, including:
 - 1. the timetable for the Tests, including start and end dates;
 - (i) the Testing mechanism;
 - (ii) dates and methods by which the Buyer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (iv) the format and an example of Test progress reports and the process with which the Buyer accesses daily Test schedules;
 - (v) the process which the Buyer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (vi) the Test Schedule;
 - (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (viii) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Buyer in the Test Plans.

6 TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Attachment 6.2 (Test Success Criteria) of the Order Form; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working

Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for Testing;
- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and
 - (ii) a method to process the Test results to establish their content.

8 TESTING

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

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

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

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

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

- (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
- (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

- (a) an overview of the Testing conducted;

- (b) identification of the relevant Test Success Criteria that have been satisfied;
- (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
- (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
- (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
- (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9 TEST ISSUES

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

10 TEST WITNESSING

- 10.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - (a) shall actively review the Test documentation;
 - (b) will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

- (c) shall not be involved in the execution of any Test;
- (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- (e) may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Buyer may perform on-going quality audits in respect of any part of the Testing (each a **"Testing Quality Audit"**) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and
 - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Buyer will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Buyer witnessing Tests and demonstrations of the Deliverables to the Buyer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Buyer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.

- 11.6 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall:
- (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - (b) subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 11.7 In the event of an inadequate response to the Buyer's report from the Supplier, the Buyer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

12 OUTCOME OF TESTING

- 12.1 The Buyer shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
- (a) the Buyer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).
- 12.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 13.1 The Buyer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- (a) the issuing by the Buyer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

- (b) performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).
- 13.3 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out:
 - (a) the applicable Test Issues ; and
 - (b) any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Buyer's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process) and the Buyer shall refuse to issue a Milestone Achievement Certificate where:
 - (a) there is one or more Material Test Issue(s); or
 - (b) the information required under Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule 8.4 (Reports and Records Provision).
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 13.3); and
 - (b) where the Buyer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

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

ANNEX 2: TEST CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: *[insert description of Deliverables]*

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

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

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

OR

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

**delete as appropriate*

Yours faithfully

[Name]

[Position] acting on behalf of

[name of Buyer] ANNEX 3:

MILESTONE ACHIEVEMENT

CERTIFICATE

To: *[NAME OF SUPPLIER]*

FROM: *[NAME OF BUYER]*

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: *[insert description of Milestone]*

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

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

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

OR

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

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

**delete as appropriate*

Yours faithfully

[**Name**]

[**Position**]

acting on behalf of [**Buyer**]

ANNEX 4: TEST SUCCESS CRITERIA

Attachment 6.2 (Test Success Criteria) of the Order Form

SCHEDULE 7.1
CHARGES AND INVOICING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Achieved Profit Margin”	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
“Anticipated Contract Profit Margin”	Life the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
“Capped ADR”	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, [REDACTED]
“Certificate of Costs”	a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none"> (i) base salary paid to the Supplier Personnel; (ii) employer’s national insurance contributions; (iii) Employer Pension Contributions; (iv) car allowances; (v) any other contractual employment benefits; (vi) staff training; (vii) work place accommodation; (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and (ix) reasonable recruitment costs, as agreed with the Buyer; <p>(b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting</p>

principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Buyer or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;

(c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

(d) Forecast Contingency Costs;

(e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism; but excluding:

(i) Overhead;

(ii) financing or similar costs;

(iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;

(iv) taxation;

(v) fines and penalties;

(vi) amounts payable under Schedule 7.3 (*Benchmarking*); and

(vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Delay Payment Rate” has the meaning given in Paragraph 1.1(a) of Part C;

“The Employer Pension Contributions”

means:

(a) in respect of CSPA Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the Admission Contract;

(b) in respect of NHSPA Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier[1] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any

NHS Premature Retirement Rights, unless otherwise agreed in writing by the Buyer);

(c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier^[2] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Buyer); and such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Buyer in writing to constitute 'Employer Pension Contributions';

“European Standard”

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

“Forecast Contingency Costs”

the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time);

“Guaranteed Maximum Price”

in relation to a Milestone, 110% of the Target Price for the relevant Milestone;

“Incurred Costs”

in relation to a Milestone, the sum of:

(a) the fixed day costs set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and

(b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

^[1] Currently 14.3%

^[2] Currently 14.3%

“Indexation” and “Index”

the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;

“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Group”	has the meaning given in Paragraph 1.5 of Part B;
“Milestone Retention”	has the meaning given in Paragraph 1.3 of Part B;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form ;
“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer’s expenses policy current from time to time, but not including:</p> <p>(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

- “Supporting Documentation”** sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
- “Target Cost”** has the meaning given in Paragraph 3.1 of Part A;
- “Target Price”** has the meaning given in Paragraph 3.1 of Part A;
- “Verification Period”** in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Part D of Attachment 7.1 (Charges) of the Order Form;
- “Work Day”** 7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
- “Work Hours”** the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Part B of Attachment 7.1 (Charges) of the Order Form and on the basis of the rates and prices specified in Part A of Attachment 7.1 (Charges) of the Order Form as more particularly set out in this Schedule.
- 1.2 Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - (b) **“Guaranteed Maximum Price with Target Cost”**, in which case the provisions of Paragraph 3 shall apply;
 - (c) **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
 - (d) **“Firm Price”**, in which case the provisions of Paragraph 5 shall apply.

- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:

- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply; (b) **“Volume Based”** pricing, in which case the provisions of Paragraph 6 shall apply; or
- (c) **“Fixed Price”** in which case the provisions of Paragraph 4 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form or any request for service optimisation & innovation – implementation work or other change projects indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:

- (a) the day rates set out in Table 1 of Part A of Attachment 7.1 (Charges) of the Order Form shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Part A of Attachment 7.1 (Charges) of the Order Form unless the Supplier has obtained the Buyer’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Buyer immediately in the event of any risk that the cap may be exceeded and the Buyer shall instruct the Supplier on how to proceed;
 - (iii) unless otherwise agreed by the Buyer in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
 - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
 - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and

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

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

- 2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Part A of Attachment 7.1 (Charges) of the Order Form and the Capped ADR in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Part A of Attachment 7.1 (Charges) of the Order Form shall not be subject to Indexation.

3 GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS

- 3.1 Where Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form.

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

Milestone Payment = $TP - ((TC - IC)/2)$ where:

TP is the Target Price for the relevant Milestone;

TC is the Target Cost for the relevant Milestone; and

IC is the Incurred Costs relating to the relevant Milestone.

- 3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Buyer and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Buyer for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form (the "**Guaranteed Maximum Price**") Represented numerically:

(a) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) < GMP$, then Milestone Payment = $TP + ((IC - TC)/2)$; or

(b) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) \geq GMP$, then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone;

TC is the Target Cost for the relevant Milestone;

TP is the Target Price for the relevant Milestone; and

GMP is $TP * 1.1$, being the Guaranteed Maximum Price for the relevant GMP Milestone.

- 3.4 The Supplier shall be entitled to Index the day costs set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

4 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 4.1 Where Table 1 or Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Part A of Attachment 7.1 (Charges) of the Order Form.

- 4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

5 FIRM PRICE MILESTONE PAYMENTS

- 5.1 Where Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Part A of Attachment 7.1 (Charges) of the Order Form.

- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

6 VOLUME BASED SERVICE CHARGES

- 6.1 Where Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form.
- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form shall be subject to annual Indexation.

7 REIMBURSABLE EXPENSES

- 7.1 Where:
 - (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
 - (b) the Buyer so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.
- 7.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request.
- 7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance, including in respect of matters such as:
 - (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment

costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

PART B: CHARGING MECHANISMS

1 MILESTONE PAYMENTS

- 1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Buyer for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- (a) a Milestone Achievement Certificate; and
 - (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.
- 1.3 The “**Milestone Retention**” for each Milestone shall be calculated as follows:
- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;
 - (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,
- and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.4 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
 - (b) no later than 60 Working Days after the invoice referred to in Paragraph 1.3(a) has been issued, the Supplier shall:
 - (i) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;

- (ii) issue to the Buyer an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);
- (iii) where a credit note is to be issued to the Buyer pursuant to Paragraph 1.4(b)(ii), repay to the Buyer a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
- (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.5 Where Milestones are stated in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and
- (b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (i) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (ii) issue to the Buyer an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (iii) where a credit note is to be issued to the Buyer pursuant to Paragraph 1.5(b)(ii), repay to the Buyer a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.6 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.7 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(iii) or 1.5(b)(iii), the Supplier shall not be entitled to invoice the Buyer for any additional Charges

relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

Release of Milestone Retentions

- 1.8 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Buyer for an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge Number*” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 3) of Part B of Attachment 7.1 (Charges) of the Order Form and corresponding CPP Milestone Charge Number identified in Paragraph 2 of Attachment 6.2 (Testing Procedures) of the Order Form as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

2 SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- (a) commences on a day other than the first day of a month; and/or
 - (b) ends on a day other than the last day of a month,

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

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

3 OPTIONAL SERVICES

If the Buyer gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Part B of Attachment 7.1 (Charges) of the Order Form; and

- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Part B of Attachment 7.1 (Charges) of the Order Form,

in both cases using the relevant rates and prices specified in Part A of Attachment 7.1 (Charges) of the Order Form.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 DELAY PAYMENTS

- 1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Buyer in respect of that Key Milestone. Delay Payments shall accrue:
 - (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
 - (b) from (but excluding) the relevant Milestone Date to (and including) the earlier of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
 - (c) on a daily basis, with any part day’s Delay counting as a day.
- 1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:
 - (a) where the Supplier has given the Buyer less than 3 months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone;
 - (b) where the Supplier has given the Buyer between three (3) months’ and six (6) months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone; or
 - (c) where the Supplier has given the Buyer more than 6 months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone.
- 1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within 5 Working Days of the date the notice is served:
 - (a) pay to the Buyer in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:
 - (i) in the case of a notice served pursuant to Paragraph 1.2(b), five (5) days of Delay Payments; or

- (ii) in the case of a notice served pursuant to Paragraph 1.2(c), ten (10) days of Delay Payments in accordance with paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

- (b) issue a credit note to the Buyer in respect of the relevant amount.

Failure to make payment within 10 Working Days of the Supplier's notice shall invalidate the notice.

- 1.4 Any amounts paid to the Buyer pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:

- (a) does not occur; or
- (b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.

- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Buyer will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.

- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Buyer to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:

- (a) issue a credit note to the Buyer in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
- (b) pay to the Buyer as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 PAYMENTS FOR DELAYS DUE TO BUYER CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 31.1(iii)(D) (*Buyer Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - (i) can demonstrate it has incurred solely and directly as a result of the Buyer Cause; and
 - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31.1 (*Buyer Cause*)

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

- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Buyer Cause;
- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:
 - (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

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

where:

NTP is the revised Target Price for the relevant Milestone;

TP is the original Target Price for the relevant Milestone;

AC is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Buyer Cause; and

x is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and

- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);
- (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Part A of Attachment 7.1 (Charges) of the Order Form; and

- (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Buyer paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Buyer Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.
- 2.2 The Supplier shall provide the Buyer with any information the Buyer may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

- 3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).
- 3.2 For each Service Period:
 - (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period; and
 - (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

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

where:

- | | |
|-----|---|
| SC | is the total Service Credits for the relevant Service Period; |
| TSP | is the total Service Points that have accrued for the relevant Service Period; |
| X | is 1%; |
| AC | is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits); and |
| SCC | is the Service Credit Cap percentage. |
- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).
 - 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
 - 3.5 Service Credits shall be shown as a deduction from the amount due from the Buyer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4 CHANGES TO CHARGES

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

5 INDEXATION

- 5.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.
- 5.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date. Where there is no percentage increase, then there will be no adjustment to the Charges at the adjustment date.
- 5.3 Except as set out in this Paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

6 ALLOWABLE ASSUMPTIONS

- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 6.2 During each Verification Period, the Buyer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Buyer deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Buyer with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.

6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:

- (a) on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Part D of Attachment 7.1 (Charges) of the Order Form; or
- (b) on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Part D of Attachment 7.1 (Charges) of the Order Form, in which case Paragraph 6.5 shall apply.

6.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:

- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;
- (b) the Supplier may (subject to Paragraph 6.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
- (c) where the Supplier proposes a Change to the Charges under Paragraph 6.5(b), the Change Request shall reflect the requirements of the table in Part D of Attachment 7.1 (Charges) of the Order Form, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Part D of Attachment 7.1 (Charges) of the Order Form.

7 RISK REGISTER

The Parties shall review the Risk Register set out in Part C of Attachment 7.1 (Charges) of the Order Form from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART D: EXCESSIVE SUPPLIER PROFIT MARGIN

1 LIMIT ON SUPPLIER PROFIT MARGIN

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

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

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - (a) the Supplier shall, within 5 Working Days of delivery to the Buyer of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - (b) the Buyer (acting reasonably) may agree or reject the proposed adjustments;
 - (c) if the Buyer rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - (d) if the Parties cannot agree such revised adjustments and the Buyer terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (*Termination by the Buyer*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Buyer of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

- 1.1 The Buyer shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.

- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
- (a) comply with the requirements of the Buyer's e-invoicing system;
 - (b) prepare and provide to the Buyer for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Buyer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - (c) make such amendments as may be reasonably required by the Buyer if the template invoice outlined in (b) is not approved by the Buyer.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Buyer's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Contract;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc.);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Buyer under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - (l) reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier

for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);

- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - (o) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Buyer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Buyer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Buyer, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Buyer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation through the Buyer's electronic system SAP Ariba, with a copy (again including any Supporting Documentation) to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing.
- 1.8 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Buyer's requirements set out in this Part E, the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.9 If the Buyer fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 payment in 30 days after a reasonable time has passed.

2 PAYMENT TERMS

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

ANNEX 1: PRICING MECHANISM

1 TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS

CHARGES

See Attachment 7.1 (Charges) of the Order Form

2 TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

See Attachment 7.1 (Charges) of the Order Form

3 TABLE 3: DAY COST FOR CALCULATION OF GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES

See Attachment 7.1 (Charges) of the Order Form

4 TABLE 4: GUARANTEED MAXIMUM PRICE WITH TARGET COSTS CHARGES

See Attachment 7.1 (Charges) of the Order Form

5 TABLE 5: FIXED PRICES

See Attachment 7.1 (Charges) of the Order Form

6 TABLE 6: FIRM PRICES

See Attachment 7.1 (Charges) of the Order Form

7 TABLE 7: VOLUME CHARGES

See Attachment 7.1 (Charges) of the Order Form

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

1 TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

See Attachment 7.1 (Charges) of the Order Form

2 TABLE 2: SERVICE CHARGES

See Attachment 7.1 (Charges) of the Order Form

3 TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

See Attachment 7.1 (Charges) of the Order Form

4 TABLE 4: OPTIONAL SERVICES SERVICE CHARGES

See Attachment 7.1 (Charges) of the Order Form

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

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

[Insert details of Milestone/Milestone Group]

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

Signed **[Director of Finance or equivalent]**

[Name of Supplier]

ANNEX 4: RISK REGISTER

Attachment 7.1 (Charges) of the Order Form

ANNEX 5: ALLOWABLE ASSUMPTIONS

Attachment 7.1 (Charges) of the Order Form

SCHEDULE 7.2

PAYMENTS ON TERMINATION

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Personnel”	Supplier	<p>any Supplier Personnel who: (i)</p> <p>at the Termination Date:</p> <p>a) are employees of the Supplier;</p> <p>b) are Dedicated Supplier Personnel;</p> <p>c) have not transferred (and are not in scope to transfer at a later date) to the Buyer or the Replacement Supplier by virtue of the Employment Regulations; and</p> <p>(ii) are dismissed or given notice of dismissal by the Supplier within:</p> <p>d) 40 Working Days of the Termination Date; or</p> <p>e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and</p> <p>(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and</p> <p>(iv) the Supplier can demonstrate to the satisfaction of the Buyer:</p> <p>a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;</p> <p>b) are genuinely being dismissed for reasons of redundancy; and</p> <p>c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;</p>
“Breakage Costs Payment”		an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Compensation Payment”		the payment calculated in accordance with Paragraph 6;
“Contract Breakage Costs”		<p>the amounts payable by the Supplier to its Key Subcontractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Contract; all Supplier Personnel then assigned to the Services or any</p>

“Dedicated Personnel”	Supplier	part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Buyer whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”		the Supplier Profit paid or payable to the Supplier under this Contract for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”		<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Buyer based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <p>(a) any statutory redundancy payment; and</p> <p>(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Buyer Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;</p>
“Request for Estimate”		a written request sent by the Buyer to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Buyer exercised its right under Clause 33.1(a) (<i>Termination by the Buyer</i>) to terminate this Contract for convenience on a specified Termination Date;
“Shortfall Period”		has the meaning given in Paragraph 6.2;
“Termination Estimate”		has the meaning given in Paragraph 11.2;
“Third Party Contract”		a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Attachment 4.4 (<i>Third Party Contracts</i>) of the Order Form;
“Total Costs Incurred”		the Costs incurred by the Supplier up to the Termination Date in the performance of this Contract and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

“Unrecovered Costs”

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

“Unrecovered Payment”

an amount equal to the lower of:

(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and

(b) the amount specified in Paragraph 4; and

“Unrecovered Profit”

(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Buyer*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

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

- (a) would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Contract;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

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

Contract Breakage Costs

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

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Attachment 7.2 (Maximum Payments on Termination) of the Order Form;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

- (c) the Charges that but for the termination of this Contract would have been payable by the Buyer after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

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

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

6 COMPENSATION PAYMENT

- 6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Buyer*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.
- 6.2 For the purposes of Paragraph 6.1, the "**Shortfall Period**" means:
 - (a) where the Buyer terminates this Contract pursuant to Clause 33.1(a) (*Termination by the Buyer*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of three hundred and sixty-five (365) days; or
 - (b) where the Supplier terminates this Contract pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Buyer to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 6.3.
- 6.3 The Compensation Payment shall be no greater than the lower of:

- (a) the relevant limit set out in Attachment 7.2 (Maximum Payments on Termination) of the Order Form; and
- (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Buyer pursuant to Clause 33.1(a) (*Termination by the Buyer*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

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

9 SET OFF

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

10 NO DOUBLE RECOVERY

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

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Buyer may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Buyer based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall: (a) be based on the relevant amounts set out in the Financial Model;

- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Buyer may reasonably require; and
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

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

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

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

Attachment 7.2 (Maximum Payments on Termination) of the Order Form

SCHEDULE 7.3
BENCHMARKING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Benchmarked Service”** a Service that the Buyer elects to include in a Benchmark Review under Paragraph 2.3;
- “Benchmarker”** the independent third party appointed under Paragraph 3.1;
- “Benchmark Report”** the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
- “Benchmark Review”** a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
- “Comparable Service”** in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
- “Comparison Group”** in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
- “Equivalent Services Data”** in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
- “Good Value”**
- (a) in relation to a Benchmarked Service, that:
 - having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
 - (b) any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service

levels for the Comparable Service using Equivalent Services Data;
and

“Upper Quartile” the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Buyer shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Buyer in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

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

4 BENCHMARK REVIEW

- 4.1 The Buyer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
 - (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;

- (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:

- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarkers' professional judgment;
- (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
- (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
- (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
- (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
- (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarkers shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 BENCHMARK REPORT

5.1 The Benchmarkers shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data

5.2 The Benchmarker shall act as an expert and not as an arbitrator.

5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Buyer but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.

5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.

5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.

5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Buyer shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

5.8 On conclusion of the Expert Determination:

- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Buyer the difference between the Charges paid by the Buyer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges

should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

- (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;
 - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Buyer, constitute a Supplier Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

Attachment 7.3 (Approved Benchmarkers) of the Order Form

ANNEX 2: CONFIDENTIALITY CONTRACT

CONFIDENTIALITY AGREEMENT THIS

AGREEMENT is made on [date]

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1 Interpretation

1.1 In this Contract, unless the context otherwise requires:

“Confidential means:

Information”

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

connection with the Permitted Purpose and all matters arising therefrom; and

d) Information derived from any of the above, but not including any Information that:

e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;

f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;

g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or

h) was independently developed without access to the Confidential Information;

"Information"

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

"Permitted Purpose"

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

1.2 In this Contract:

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

2 Confidentiality Obligations

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

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Contract;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Contract.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Buyer for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of Schedule 7.3 (*Benchmarking*) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.

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

- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

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

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

- (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Contract;
- (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Contract.

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

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Contract. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.

- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

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

- 5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

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

(b) if to be given to the Benchmarkers shall be sent to:

[Name] of [Organisation]
[Address]

Attention: []

6 Governing law

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

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

For and on behalf of [name of Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Benchmarkers]

Signature: _____

Date:

Name:

Position:

SCHEDULE 7.4

FINANCIAL DISTRESS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Applicable Financial Indicators"	means the financial indicators from Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form which are to apply to the Monitored Suppliers as set out in Paragraph 2 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
"Credit Rating Level"	a credit rating level as specified in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Credit Rating Threshold"	the minimum Credit Rating Level for each entity in the FDE Group as set out in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"FDE Group"	means the Supplier;
"Financial Indicators"	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Monitored Suppliers"	means those entities specified at Paragraph 2 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Rating Agencies"	the rating agencies listed in Part B of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form.

2 WARRANTIES AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Buyer for the benefit of the Buyer that as at the Effective Date:
 - (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part B of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form; and
 - (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 The Supplier shall:
 - (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each in Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
 - (a) both of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form ceases to hold a Credit Rating for that entity.
- 2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:
 - (a) be a single report with separate sections for each of the FDE Group entities;

- (b) contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

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

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

- (g) any one of the Financial Indicators set out at Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Buyer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
 - (a) rectify such late or non-payment; or
 - (b) demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
 - (a) at the request of the Buyer, meet the Buyer as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
 - (b) where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (i) submit to the Buyer for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key

Sub-contractors and/or the Guarantor as the Buyer may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

- 4.4 The Buyer shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Buyer does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Buyer within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Buyer or referred to the Dispute Resolution Procedure under Paragraph 4.5.
- 4.5 If the Buyer considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
- 4.6 Following approval of the Financial Distress Remediation Plan by the Buyer, the Supplier shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Buyer, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
 - (ii) provide a written report to the Buyer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Buyer for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Buyer and within reasonable timescales. Such measures may include:

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

5 FINANCIAL INDICATORS

Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form

Monitored Suppliers

Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form

6 TERMINATION RIGHTS

The Buyer shall be entitled to terminate this Contract under Clause 33.1(b) (*Termination by the Buyer*) if:

- (a) the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.3(c);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7 PRIMACY OF CREDIT RATINGS

7.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating

Thresholds specified for those entities in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
- (b) the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Buyer in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Buyer (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) Part B of the Order Form

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) Part C of the Order Form

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) Parts A and D of the Order Form

ANNEX 4: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

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

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

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

On behalf of the Board of Directors:

Chair
Signed
Date
Director
Signed
Date

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Annual Contract Report”** the annual contract report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
- “Audit Agents”**
- (a) the Buyer’s internal and external auditors;
 - (b) the Buyer’s statutory or regulatory auditors;
 - (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
 - (d) HM Treasury or the Cabinet Office;
 - (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and
 - (f) successors or assigns of any of the above;
- “Contract Amendment Report”** the contract amendment report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
- “Final Reconciliation Report”;** the final reconciliation report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
- “Financial Model”** the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Buyer in accordance with Paragraph 2 of Part B;
- “Financial Reports”** the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
- “Financial Representative”** a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
- “Financial Transparency Objectives”** has the meaning given in Paragraph 1 of Part A;
- “Material Change”** a Change which:
- (a) materially changes the profile of the Charges; or
 - (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and (iv) Reimbursable Expenses; (c) Overheads; (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; (e) the Supplier Profit achieved over the Term and on an annual basis; (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

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

1.1 Understanding the Charges

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

1.2 Agreeing the impact of Change

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

1.3 Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
 - (g) to enable the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices,
- (together the "**Financial Transparency Objectives**").

2 OPEN BOOK DATA

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

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

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Buyer and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Buyer of the designation and shall prepare and deliver to the Buyer within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
 - (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Buyer shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Buyer's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Buyer and Programme Board on an information only basis and the Buyer and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

- 1.1 The Supplier shall provide
- (a) the Contract Inception Report on or before the Effective Date; and
 - (b) during the Term the following financial reports to the Buyer, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Buyer
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to the Buyer the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract. The Buyer shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
- (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Contract;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

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

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

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

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

2 FINANCIAL MODEL

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

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Buyer; and

(c) the Buyer shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:

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

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

2.2 Following approval by the Buyer of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.

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

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

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

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

4 KEY SUB-CONTRACTORS

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

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

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

(b) on written request by the Buyer, provide the Buyer or procure that the Buyer is provided with:

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

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

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

- 1.1 The Buyer, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Certificate of Costs and/or the Open Book Data;
 - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (j) to carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
 - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
 - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
 - (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers;
- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (r) to review the Supplier's compliance with the Standards;
- (s) to inspect the Buyer Assets, including the Buyer's IPRs, equipment and facilities, for the purposes of ensuring that the Buyer Assets are secure and that any register of assets is up to date; and/or
- (t) to review the integrity, confidentiality and security of the Buyer Data.

1.2 Except where an audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

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

2 CONDUCT OF AUDITS

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

2.2 Subject to the Buyer's obligations of confidentiality, the Supplier shall on demand provide the Buyer and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Buyer within the permitted scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the

applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

- 2.4 The Buyer shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Buyer for all the Buyer's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

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

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - (a) the Supplier has committed a Default, the Buyer may (without prejudice to any rights and remedies the Buyer may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Buyer has overpaid any Charges, the Supplier shall pay to the Buyer:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Buyer up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Buyer in undertaking the audit, the Buyer may exercise its right to deduct such amount from the Charges if it prefers; and

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

SCHEDULE 7.6

ANTICIPATED SAVINGS

Attachment 7.6 (Anticipated Savings) of the Order Form

SCHEDULE 8.1

GOVERNANCE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Board Member” the initial persons appointed by the Buyer and Supplier to the Boards as set out in Attachment 8.1 (Representation and Structure of Boards) of the Order Form and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

“Boards” the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and **“Board”** shall mean any of them;

“Change Management Board” the body described in Paragraph 6;

“Project Managers” the individuals appointed as such by the Buyer and the Supplier in accordance with Paragraph 1; and

“Risk Management Board” the body described in Paragraph 8;

“Service Management Board” the body described in Paragraph 4; and

“Technical Board” the body described in Paragraph 7.

2 MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Buyer shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

3 BOARDS

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Buyer for the purposes of this Contract on which both the Supplier and the Buyer shall be represented.
- 3.2 In relation to each Board, the:
 - (a) Buyer Board Members;
 - (b) Supplier Board Members;
 - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);

- (d) location of the Board's meetings; and
- (e) planned start date by which the Board shall be established,

shall be as set out in Attachment 8.1 (Representation and Structure of Boards) of the Order Form.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Buyer Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Buyer for each Board as identified in Attachment 8.1 (Representation and Structure of Boards) of the Order Form. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
 - (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the Board meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each

Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE SERVICE MANAGEMENT BOARD

The Service Management Board shall be responsible for the executive management of the Services and shall:

- (a) be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
- (c) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- (d) review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- (e) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- (f) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- (g) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5 ROLE OF THE PROGRAMME BOARD

5.1 The Programme Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Programme Board shall:

- (a) ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Buyer and the commercial benefit derived by the Supplier;

- (b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

6 ROLE OF THE CHANGE MANAGEMENT BOARD

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

6.2 The Change Management Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Buyer to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (b) provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- (c) approve or reject (close) all proposed Changes.

7 ROLE OF THE TECHNICAL BOARD

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Buyer.

7.2 The Technical Board shall:

- (a) ensure compliance with the Standards;

- (b) grant dispensations for variations from such compliance where appropriate;
- (c) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (d) monitor developments in new technology and reporting on their potential benefit to the Services;
- (e) provide advice, guidance and information on technical issues; and
- (f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Buyer.

8 ROLE OF THE RISK MANAGEMENT BOARD

8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.

8.2 The Risk Management Board shall:

- (a) provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
- (b) identify the risks to be reported to the Programme Board via the regular risk reports;
- (c) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (d) ratify or refuse requests to close risks on the Risk Register; and
- (e) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

9 CONTRACT MANAGEMENT MECHANISMS

9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.

9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:

- (a) the identification and management of risks; (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

10 ANNUAL REVIEW

- 10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 10.2 The meetings shall be attended by the [REDACTED] of the Supplier and the [REDACTED] of the Buyer and any other persons considered by the Buyer necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Attachment 8.1 (Representation and Structure of Boards) of the Order Form

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Buyer Change Manager”** the person appointed to that position by the Buyer from time to time and notified in writing to the Supplier or, if no person is notified, the Buyer Representative;
- “Change Request”** a written request for a Contract Change which shall be substantially in the form of Annex 1;
- “Change Communication”** any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
- “Fast-track Change”** any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
- “Impact Assessment”** an assessment of a Change Request in accordance with Paragraph 5;
- “Impact Assessment Estimate”** has the meaning given in Paragraph 4.3;
- “Receiving Party”** the Party which receives a proposed Contract Change; and
- “Supplier Change Manager”** 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 Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. 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 Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change 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 6;

- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2, then:

- (a) 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 Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

2.6 The Supplier shall:

- (a) 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 Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) 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 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) 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 are equal to or less than a level of reasonable effort (with the Supplier acting in accordance with Good Industry Practice) equating to 3 man days per month in aggregate for all Impact Assessments within that month (which may not be pulled forwards from any previous months or carried over into subsequent months);
- (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 Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Attachment 7.1 (Charges) of the Order Form. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Buyer as soon as is reasonably practicable but in any event within 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:

- (a) The nature of the request for clarification; and

- (b) 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:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;
- (c) 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 Contract Change to the Buyer's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Buyer may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

- 5.3 Subject to the provisions of Paragraph 5.4, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 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 Contract Change 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 5.4 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 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 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:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law or if the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting, as per Schedule 7.1, Part C, para 6.5. If the Buyer does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - (c) 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 5.4, on receiving the modified Change Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 If the Buyer approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note 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

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change 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 in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change 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 4.3.

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.
- 8.2 If:
- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
 - (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed a de

minimis value as may be agreed in writing between the Parties and the proposed Contract Change 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, 5, 6 and 7 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.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes 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 Contract Changes provided they do not:

- (a) have an impact on the business of the Buyer;
- (b) require a change to this Contract;
- (c) have a direct impact on use of the Services; or
- (d) 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 Representative.

- 9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Buyer of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 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

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 44 (Notices) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:

[KEY MILESTONE DATE: <i>[if any]</i>]	
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:	
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:	
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):	
SIGNED ON BEHALF OF THE BUYER:	SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____	Signature:_____
Name:_____	Name:_____
Position:_____	Position:_____
Date:_____	Date:_____

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “CEDR”** the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
- “Counter Notice”** has the meaning given in Paragraph 7.2;
- “Expert”** in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
- “Expert Determination”** determination by an Expert in accordance with Paragraph 6;
- “Mediation Notice”** has the meaning given in Paragraph 4.2;
- “Mediator”** the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
- “Multi-Party Dispute”** a Dispute which involves the Parties and one or more Related Third Parties;
- “Multi-Party Dispute Representatives”** has the meaning given in Paragraph 9.6;
- “Multi-Party Dispute Resolution Board”** has the meaning given in Paragraph 9.6; **Resolution Board”**
- “Related Third Party”** a party to:
- (a) another contract with the Buyer or the Supplier which is relevant to this Contract; or
 - (b) a Sub-contract; and
- “Supplier Request”** 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 Representative and the Supplier 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 46 (*Governing Law and Jurisdiction*)).

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:

- (a) in Paragraph 4.2(c), 10 Working Days;
- (b) in Paragraph 5.2, 10 Working Days;
- (c) in Paragraph 6.2, 5 Working Days; and
- (d) in Paragraph 7.2, 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

4.1 Following the service of a Dispute Notice, then, so long as the Buyer has not served a MultiParty 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 representative and the Supplier's representative.

4.2 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 Change Control 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 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 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 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
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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 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 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 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.

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Buyer for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Part A of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form (once approved, the “**Transparency Reports**”).
- 1.2 If the Buyer rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Buyer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in Part A of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2 OTHER REPORTS

The Buyer may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.


3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 2 (together “**Records**”):

- (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Buyer on request, subject to the Buyer giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Buyer.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Buyer:
 - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its unaudited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4 Virtual Library

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Buyer, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in in accordance with the requirements outlined in this Schedule.
- 4.2 The Supplier shall ensure that the Virtual Library is:

- (a) capable of holding and allowing access to the information described in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
 - (b) structured so that each document uploaded has a unique identifier which is automatically assigned;
 - (c) readily accessible by the Buyer at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Buyer from time to time,
 - (d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
 - (e) structured and maintained in accordance with the security requirements as set out in this Contract including those set out in Schedule 2.4 (Security Management); (f) created and based on open standards in Schedule 2.3 (Standards); and
 - (g) backed up on a secure off-site system.
- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Buyer pursuant to Clause 17.1 (Project Specific IPR) of this Contract.
- 4.4 The Supplier shall upload complete and accurate information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where the Buyer has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Buyer email address at:
- 
- 4.6 Except for notices under Clause 44.4 or items covered by Clause 44.6, where the Supplier is under an obligation to provide information to the Buyer in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Buyer with that information provided that the Buyer has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Buyer access to up-to-date information, Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.

- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) access to view and download the specified information in the Virtual Library in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form subject upon the occurrence of the event specified in the column marked Access Permission in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) from the Initial Upload Date.
- 4.10 Where Access Permission is specified as being granted to the Buyer's Third Party Auditor (prior to the Buyer being granted access) it shall:
- (a) be entitled to access, view and download information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under paragraph 4.10(b) of this Schedule); and
 - (b) report to the Buyer (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.
- 4.14 In the event of a conflict between any requirement in this Contract (excluding Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) for the Supplier to provide information to the Buyer and the requirements set

out in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form, the requirement elsewhere in this Contract shall prevail.

- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Buyer relating to the use of the Virtual Library.
- 4.17 On request by the Buyer the Supplier shall provide the Buyer's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: TRANSPARENCY REPORTS

**Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order
Form**

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Contract, its Schedules and all amendments to such documents.
2. All other documents which this Contract expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Buyer Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Buyer of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).

18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

**Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) Part B of the
Order Form**

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Subcontracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Subcontracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

SCHEDULE 8.5
EXIT MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Application Interface” or “API”	Programming Means a piece of software that facilitates access to the Supplier’s application(s) to provide access to business functionality and/or Buyer Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-api-technical-and-data-standards
“Emergency Exit”	any termination of this Contract which is a: <ul style="list-style-type: none"> (a) termination of the whole or part of this Contract in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or (c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Contract”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Subcontractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Buyer of the same date as this Contract;

“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or as a result of the expiry of the Initial Term or any Extension Period;
“Registers”	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Buyer; and
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 7.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and

- (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Buyer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
 - (c) agree the format of the Registers with the Buyer as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Buyer Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- (g) such other material and information as the Buyer shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Buyer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Buyer may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Buyer within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Buyer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Buyer.

3.4 The Supplier may charge the Buyer for its reasonable additional costs to the extent the Buyer requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

4.1 The Buyer may require the Supplier to enter into the Ethical Wall Contract at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

- 4.2 If required to enter into the Ethical Wall Contract, the Supplier will return a signed copy of the Ethical Wall Contract within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Contract will be borne solely by the Supplier.

5 EXIT PLAN

- 5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Buyer an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Buyer and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract; (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Buyer.

- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Buyer shall require to enable the Buyer or its sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the Replacement Supplier and/or the Buyer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Buyer's technology components

from any technology components operated by the Supplier or its Sub-contractors (where applicable);

- (h) the scope of the Termination Services that may be required for the benefit of the Buyer (including such of the services set out in Annex 1 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - (l) procedures to deal with requests made by the Buyer and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
 - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Buyer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Buyer and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Buyer following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Buyer for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Buyer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Buyer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Buyer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **“Termination Assistance Notice”**) at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.

- 6.2 The Buyer shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Buyer may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Buyer pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Buyer any reasonable assistance requested by the Buyer to allow the Services to

continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Buyer and/or its Replacement Supplier;

- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer.

6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

6.5 If the Supplier demonstrates to the Buyer's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.

6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

- (a) cease to use the Buyer Data;
- (b) provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form (or such other format as reasonably required by the Buyer);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Buyer Data and promptly certify to the Buyer that it has completed such deletion;
- (d) return to the Buyer such of the following as is in the Supplier's possession or control:

- (i) all copies of the Buyer Software and any other software licensed by the Buyer to the Supplier under this Contract;
- (ii) all materials created by the Supplier under this Contract in which the IPRs are owned by the Buyer;
- (iii) any parts of the IT Environment and any other equipment which belongs to the Buyer; and
- (iv) any items that have been on-charged to the Buyer, such as consumables;
- (e) vacate any Buyer Premises unless access is required to continue to deliver the Services;
- (f) provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

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

6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Buyer's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;

- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Buyer shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier in respect of the terminated Services (**"Transferring Assets"**);
 - (i) 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
- (b) which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the **"Transferring Contracts"**),

in order for the Buyer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Buyer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Buyer and/or its Replacement Supplier requires to provide the Services or Replacement Services.

7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Buyer to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Buyer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

7.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) on payment for the same.

- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Buyer) for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Buyer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Buyer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 7.7 The Buyer shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until such time as the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Clause 17 (Transfer and Licences Granted by the Supplier).

8 SUPPLIER PERSONNEL

- 8.1 The Buyer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Buyer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Buyer and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Buyer or, at the direction of the Buyer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or reengage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Buyer may require the Supplier to provide the Termination Services), the Buyer shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Buyer requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
 - (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Buyer shall not be

obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

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

10.2 Each Party shall pay (and/or the Buyer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

1 The Termination Services to be provided by the Supplier shall include such of the following services as the Buyer may specify:

- (a) ceasing all non-critical Software changes (except where agreed in writing with the Buyer);
- (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and rewriting 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;
- (d) delivering to the Buyer the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;

- (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Buyer with any problem logs which have not previously been provided to the Buyer;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Buyer and/or the Replacement Supplier;
- (k) providing assistance and expertise as necessary to support the Buyer and/or the Replacement Supplier develop the migration plan for business operations and Buyer Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Buyer Data;
- (l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Buyer and/or Replacement Supplier;
- (m) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Buyer (acting reasonably) at the time of termination or expiry;
- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;

- (q) delivering copies of the production databases (with content listings) to the Buyer's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Buyer;
- (r) assisting with the loading, testing and implementation of the production databases;
- (s) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (t) in respect of the maintenance and support of the Supplier System, providing historical performance data from the contract effective date;
- (u) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Buyer (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (v) providing an information pack listing and describing the Services for use by the Buyer in the procurement of the Replacement Services;
- (w) answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Services;
- (x) agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Buyer Data to the Buyer and/or the Replacement Supplier;
- (y) providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Buyer and/or the Replacement Supplier:
 - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors

(and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (z) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

- (ii) providing for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Buyer at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Buyer Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier;
- (d) 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;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Buyer; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

(a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:

- (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
- (ii) 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

(b) the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Contract is dated [] 20[]

Between

- (1) **[INSERT NAME OF BUYER]** (the "**Buyer**") [acting on behalf of the Crown] of [insert Buyer's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

- A. The Buyer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("Contract") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- B. The Buyer is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- C. The Buyer has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Buyer or of a procurement service provider acting on behalf of the Buyer who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- D. Pursuant to Regulation 41 of the PCR, the Buyer is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Buyer has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Buyer under existing contractual arrangements or as a subcontractor under those same arrangements.
- E. The parties wish to enter into this Contract to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Contract" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

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

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

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Buyer under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Buyer and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Contract as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Buyer as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Buyer has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Buyer as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

"Parties" means the Buyer and the Counterparty;

"Professional Advisor" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

"Purpose" has the meaning given to it in recital B to this Contract;

"Representative" refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

"Third Party" means any person who is not a Party and includes Other Affiliates and Other Bidders.

1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.

1.3 Reference to the disclosure of information, or provision of access, by or to the Buyer or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Buyer or Representatives of the Counterparty (as the case may be).

1.4 Reference to persons includes legal and natural persons.

1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.

1.6 Reference to clauses and recitals is to clauses of and recitals to this Contract.

1.7 Reference to any gender includes any other.

1.8 Reference to writing includes email.

1.9 The terms "associate", "holding company", "subsidiary", "subsidiary undertaking" and "wholly owned subsidiary" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.

1.10 The words "include" and "including" are to be construed without limitation.

1.11 The singular includes the plural and vice versa.

1.12 The headings contained in this Contract shall not affect its construction or interpretation.

2 ETHICAL WALLS

2.1 In consideration of the sum of £1 payable by the Buyer to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates

or Representatives and the duties owed to the Buyer under the Contract or pursuant to an open and transparent ITT Process;

- 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Buyer under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- 2.1.3 where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- 2.2.1 Not assign any of the Conflicted Personnel to the Bid Team at any time;
- 2.2.2 Provide to the Buyer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- 2.2.3 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (b) which would or could in the opinion of the Buyer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- 2.2.4 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.2.5 Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Contract are entered into as necessary between the Buyer and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Buyer;
- 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Contract;
- 2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Contract ensure adherence to the ethical wall arrangements;

- 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.2.10 comply with any other action as the Buyer, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:
 - 2.3.1 notify the Buyer immediately of all perceived, potential and/or actual conflicts of interest that arise;
 - 2.3.2 submit in writing to the Buyer full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
 - 2.3.3 seek the Buyer's approval thereto,

which the Buyer shall have the right to grant, grant conditionally or deny (if the Buyer denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Buyer grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Buyer to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Buyer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Buyer there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Buyer.
- 2.6 The Buyer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Buyer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Contract.
- 2.8 The actions of the Buyer pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.
- 2.9 In no event shall the Buyer be liable for any bid costs incurred by:
 - 2.9.1 the Counterparty or any Affiliate or Representative; or 2.9.2 any Other Bidder,

Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Contract, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

- 2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
- 2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Buyer shall have the right to terminate this Contract and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

It is the sole responsibility of the Counterparty to comply with the terms of this Contract. No approval by the Buyer of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Buyer shall discharge the Counterparty's obligations.

4 WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Contract or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Contract is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Contract or affect the validity or enforceability of the provisions of this Contract in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 5.2 The Buyer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
 - 5.2.1 any Central Government Body; or
 - 5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer; and
 - 5.2.3 the Counterparty shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer may reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 5.

- 5.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Contract has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Contract but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

The parties acknowledge and agree that the Buyer is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Buyer may disclose the contents of this Contract to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8 NOTICES

- 8.1 Any notices sent under this Contract must be in writing.

- 8.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Contract:

	Counterparty	Buyer
Contact		
Address		
Email		

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 WAIVER AND CUMULATIVE REMEDIES

9.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10 TERM

Each party's obligations under this Contract shall continue in full force and effect for period of [] years from the Effective Date.

11 GOVERNING LAW AND JURISDICTION

11.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

Signed by the Buyer

Name:

Signature:

Position in Buyer:

Name:

Signature:

Position in Counterparty:

Signed by the Counterparty

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART 1: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”		has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”		has the meaning given in Paragraph 4.2(b);
“Department”		a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
“Disaster”		the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Plan”	Recovery	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Services”	Recovery	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster System”	Recovery	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”		has the meaning given in Paragraph 2.2(a)(iv).
“Related Provider”	Service	any person who provides services to the Buyer in relation to this Contract from time to time, which persons include as at the Effective Date;
“Review Report”		has the meaning given in Paragraphs 7.2(a) to 7.2(c);
“Service Continuity Plan”		means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

- 2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Subcontractor and/or any Supplier Group member); and (b) the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **"Business Continuity Plan"**);
 - (iii) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Subcontractors and/or any Supplier Group member (the **"Insolvency Continuity Plan"**); and
 - (b) unless otherwise required by the Buyer in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Buyer shall:
- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Buyer.
- 2.4 If the Buyer rejects the draft Service Continuity Plan:
- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Service Continuity Plan to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Buyer by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Buyer and (at the Buyer's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Buyer and any of its other Related Service Providers in each case as notified to the Supplier by the Buyer from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Buyer;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Buyer;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

- (k) identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Buyer as notified by the Buyer from time to time to inform decisions in support of the Buyer's business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Buyer, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4 SERVICE CONTINUITY PLAN: PART B - BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Buyer expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;

- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - (a) the technical design and build specification of the Disaster Recovery System;
 - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data backup and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and

- (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) 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;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Buyer supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Subcontractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - (c) plans to manage and mitigate identified risks;
 - (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
 - (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
 - (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
 - (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
 - (c) within 14 days of a Financial Distress Event;
 - (d) within 30 days of a Corporate Change Event; and
 - (e) where the Buyer requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Buyer shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Buyer a report (a "**Review Report**") setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Buyer shall:
- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Buyer.

7.4 If the Buyer rejects the Review Report and/or the Supplier's Proposals:

- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Buyer's comments and carrying out any necessary actions in connection with the revision) and shall resubmit a revised Review Report and/or revised Supplier's Proposals to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Buyer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Buyer may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Buyer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

8.2 If the Buyer requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer in this regard. Each test shall be carried out under the supervision of the Buyer or its nominee.

8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing

shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.

8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Buyer a report setting out:

- (a) the outcome of the test;

- (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
- (c) the Supplier's proposals for remedying any such failures.

- 8.6 Following each test, the Supplier shall take all measures requested by the Buyer, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Buyer, by the date reasonably required by the Buyer and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Buyer. **9**

INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Buyer promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Buyer.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

PART 2: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

- 10.1 This Contract is a Critical Service Contract.
- 10.2 The Supplier shall notify the Buyer in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.

11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part 2:

- (a) where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
- (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Buyer's or Relevant Authorities' request.

11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2:

- (a) is full, comprehensive, accurate and up to date;
- (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Authorities to understand and consider the information for approval;
- (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
- (e) complies with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Buyer or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Buyer shall procure that the Relevant Buyer or Relevant Authorities discuss in good faith the contents of the CRP

Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Buyer or Relevant Authorities approve the CRP Information or that Relevant Buyer or Relevant Authorities reject the CRP Information.

11.5 If the Relevant Buyer or Relevant Authorities reject the CRP Information:

- (a) the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Authorities for approval within 30 days of the date of the Relevant Buyer's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part 2 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.

11.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Buyer or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part 2) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress);

- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Buyer (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part 2, the Supplier shall provide at the request of the Relevant Buyer or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Relevant Buyer or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (i) Aa3 or better from Moody's;
- (ii) AA- or better from Standard and Poors;
- (iii) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant

information to the Relevant Buyer or Relevant Authorities to the extent required under Paragraph 11.8.

12 Termination Rights

12.1 The Buyer shall be entitled to terminate this Contract under Clause 33.1(b) (Termination by the Buyer) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Buyer's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Buyer or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

13 Confidentiality and usage of CRP Information

13.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

13.2 Where the Relevant Buyer is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Buyer under paragraph 13.1 of this Part 2 and Clause 21.

13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Authorities pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Buyer or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- a) redacting only those parts of the information which are subject to such obligations of confidentiality
- b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - i) summarising the information; ii)
 - grouping the information; iii) anonymising the

information; and iv) presenting the
information in general terms

- 13.5 The Supplier shall provide the Relevant Buyer or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

APPENDIX I Group

Structure Information and Resolution Commentary

1. The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Buyer to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II and the dependencies between each.

APPENDIX II

UK Public Sector / CNI contract Information

1. The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Appendix II and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

SCHEDULE 8.7

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a “**Sensitive Claim**”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Buyer and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

SCHEDULE 9.1

STAFF TRANSFER

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Former Supplier”		a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”		the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including: <ul style="list-style-type: none"> (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;
“Notified Sub-contractor”		a Sub-contractor identified in Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”		HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Contracts and Related Issues”</i> issued in June 2004;
“Replacement contractor”	Sub-	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such subcontractor);
“Relevant Transfer”		a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”		in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
“Service Transfer”		any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”		the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

“Staffing Information”		in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex 2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex 2 from time to time.
“Statutory Schemes”		means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier's Final Supplier Personnel List”		a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”		a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Buyer Employees”		those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”		in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”		those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be.

PART A: TRANSFERRING BUYER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Buyer and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date

as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Buyer Employee.

- 1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 BUYER INDEMNITIES

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

- (a) any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Buyer before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other

statutory authority relates to financial obligations arising before the Relevant Transfer Date.

- (e) a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Buyer; and
- (b) the Buyer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Notified

Subcontractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of parttime workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Buyer within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Buyer nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment

Regulations applied so as to transfer his/her employment from the Buyer to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
 - (h) any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Contract which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
 - (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013; (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

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

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

- 1.1 The Buyer and the Supplier agree that:
 - (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration,

benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for

whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Buyer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Buyer and, where required by the Buyer, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or

- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Buyer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:

- (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of parttime workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Buyer and, if applicable, the Former Supplier, within 6 months of the Effective Date.

- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee

representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken

holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Contract which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013; (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

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

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1. The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2. If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Buyer and, where required by the Buyer, give notice to the Former Supplier; and

- (b) the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3. If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4. If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
 the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1. Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Buyer shall:
 - (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Buyer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2. If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3. Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with

the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4. The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of parttime workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Buyer and, if applicable, Former Supplier within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the

Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: PENSIONS

1 DEFINITIONS

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

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Contract"	either or both of the CSPA Admission Contract (as defined in Annex D1: CSPA) or the LGPS Admission Contract) as defined in Annex D3: LGPS), as the context requires;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPA Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);

"Fair Deal Employees"

any of:

- (i) Transferring Buyer Employees;
- (ii) Transferring Former Supplier Employees; and/or
- (iii) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3 (d) of Parts A or B or paragraph 1.2 (d) of Part C;
- (iv) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)
- (v) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Buyer;

"Fund Actuary"

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

"LGPS"

the scheme as defined in Annex D3 to this Part D; and

"NHSPS"

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

2 PARTICIPATION

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Contract and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
 - (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Contract and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

- (b) subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

- 2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3 PROVISION OF INFORMATION

- 3.1 The Supplier undertakes to the Buyer:

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

4 INDEMNITIES

- 4.1 The Supplier shall indemnify and keep indemnified the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPS Admission Contract and/or the Direction Letter/Determination and/or the LGPS Admission Contract;
- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;

(c) relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

(i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;

(ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or

(d) arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

(a) shall survive termination of this Contract; and

(b) shall not be affected by the caps on liability contained in Clause 25 (Limitation of Liability).

5 DISPUTES

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

(a) who will act as an expert and not as an arbitrator;

(b) whose decision will be final and binding on the Buyer and/or the Supplier; and

(c) whose expenses shall be borne equally by the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

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

6 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 43 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any

obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

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

- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
- (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS

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

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

9 PENSION ISSUES ON EXPIRY OR TERMINATION

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

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

10 BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
- (a) established by the Relevant Transfer Date;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
 - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- (a) supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - (c) instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the

Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

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

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:

- (a) allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and
- (b) if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this paragraph.

11 BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:
- (a) established by the date of cessation of participation in the Statutory Scheme;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
 - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- (a) supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - (c) where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee

who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this paragraph.

12 RIGHT OF SET-OFF

- 12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:
 - 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPS or any CSPS Admission Contract in respect of the CSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;
 - 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from

any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee; or

- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Contract in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

- 12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

ANNEX D1: CSPA

1 DEFINITIONS

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

"CSPA Admission Contract" an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;

"CSPA Eligible Employee" any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Contract;

"CSPA Fair Deal Employee" a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal;

"CSPA" the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 FUTURE SERVICE BENEFITS

2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Contract to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPA Admission Contract in accordance with paragraph 2.1 but the CSPA Admission Contract is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining

CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of paragraph 11 of Part D.

PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Buyer any information the Buyer may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9 (Staff Transfer)(as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each

Subcontractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the

Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the

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

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Buyer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Buyer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved

the Buyer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of parttime workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits,

entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

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

2.13 Subject to Paragraph 2.14, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier

Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier

and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS

Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form

ANNEX 2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

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

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

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

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

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

Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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

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

PENSIONS

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

OTHER								
Details	Security Level	Check	Security date	Clearance	Expiry	Additional comments	info	or
Emp No 1								
Emp No 2								

Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

SCHEDULE 9.2

KEY PERSONNEL

Attachment 9.2 (Key Personnel) of the Order Form

SCHEDULE 10
GUARANTEE

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the “Deed”)

BETWEEN:

- (1) [INSERT NAME OF THE GUARANTOR] [a company incorporated in [England and Wales] under registered number [insert registered number] whose registered office is at [insert registered office]] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the “Guarantor”); and
- (2) [INSERT NAME OF THE AUTHORITY], [acting on behalf of the Crown] of [insert the Buyer’s address] (the “Buyer”).

together the “Parties” and each a “Party”.

BACKGROUND:

- A. The Buyer [has awarded] a contract dated [insert date] to [insert details of the Supplier] (the “Supplier”) for the provision of [insert details of goods or services to be provided] (the “Guaranteed Agreement”).
- B. It is a condition of the Buyer entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Buyer of a parent company guarantee substantially in the form of this Deed.
- C. The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following definitions apply in this Deed:

- “Business Day” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- “Control” means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:
 - by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or
 - as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;
- “Guaranteed Agreement” has the meaning given to it in Recital (A);

"Guaranteed Obligations"	has the meaning given to it in Clause 2.1(a);
"Supplier"	has the meaning given to it in Recital (A);
"VAT"	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the "Guarantor", the "Buyer", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) "assets" includes present and future properties, revenues and rights of every description;
- (c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- (a) guarantees to the Buyer the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the "Guaranteed Obligations");
- (b) shall pay to the Buyer from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Buyer under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Buyer, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

- 2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Buyer in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Buyer arising out of, or in connection with:
- (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
 - (c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 AUTHORITY PROTECTIONS

Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Buyer may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
- (a) any arrangement made between the Supplier and the Buyer;
 - (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
 - (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
 - (d) any waiver or forbearance by the Buyer whether as to payment, time, performance or otherwise;
 - (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
 - (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
 - (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 The Guarantor waives any right it may have to require the Buyer to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
- (a) be subrogated to any right or security of the Buyer;
 - (b) claim or prove in competition with the Buyer against the Supplier or any other person;
 - (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
 - (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
 - (e) claim any right of contribution, set-off or indemnity from the Supplier,
- without the prior written consent of the Buyer (and in such case only in accordance with any written instructions of the Buyer).
- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Buyer given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Buyer applied towards the discharge of the Guarantor's obligations to the Buyer under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Buyer in pounds sterling:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:
- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and

- (b) the Guarantor shall promptly deliver to the Buyer all receipts issued to it evidencing each deduction or withholding which it has made.

5.3 The Guarantor shall not and may not direct the application by the Buyer of any sums received by the Buyer from the Guarantor under any of the terms in this Deed.

5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5.5 The Guarantor shall, on a full indemnity basis, pay to the Buyer on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Buyer incurs in connection with:

- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
- (b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

6.1 Any release, discharge or settlement between the Guarantor and the Buyer in relation to this Deed shall be conditional on no right, security, disposition or payment to the Buyer by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Buyer shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

7.1 The Guarantor represents and warrants to the Buyer that:

- (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- (d) it has been duly authorised to enter into this Deed;
- (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;

- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Buyer shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Buyer.

9 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Buyer on the Guarantor under this Deed shall be in writing, addressed to:
 - (a) For the Attention of [insert details]
 - (b) [Address of the Guarantor in England and Wales]
- 10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Buyer in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
- 10.3 Any notice or demand served on the Guarantor or the Buyer under this Deed shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
- 10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 10.5 Any notice purported to be served on the Buyer under this Deed shall only be valid when received in writing by the Buyer.

11 ENTIRE AGREEMENT

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Buyer (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

- 12.1 No failure or delay by the Buyer to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Any waiver by the Buyer of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Buyer that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or noncontractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Buyer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of

venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

- 15.5 [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Buyer has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Buyer and deliver to the Buyer the new agent's name and address within England and Wales.]

Executed as a deed by [insert the name of the Guarantor]
] acting by [insert name of Director] a director, in the
presence of a witness:

.....
[Signature of Witness]	[Signature of Director]
	Name of Director:

Name of Witness:
Address of Witness:

Occupation of Witness:

SCHEDULE 11

PROCESSING PERSONAL DATA

JOINT CONTROLLER AGREEMENT

1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Joint Controller Agreement in replacement of Clause 23.2-23.15 (Where one Party is Controller and the other Party is Processor) and 23.17-23.27 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the Buyer:
- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
 - (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
 - (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - (e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Buyer's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

- 2.1 The Supplier and the Buyer each undertake that they shall:
- (a) report to the other Party every 12 months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;

- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Agreement during that period;

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

(iv) cost of implementing any measures.

(i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

(i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

3. Data Protection Breach

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

(i) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

(ii) all reasonable assistance, including:

(a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

(b) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

(c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

(d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

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

Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

(i) the nature of the Personal Data Breach;

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

4. Audit

4.1 The Supplier shall permit:

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

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

5. Impact Assessments

The Parties shall:

Article I. provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);

Article II. maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 GDPR.

6. ICO Guidance

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

7. Liabilities for Data Protection Breach

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

- 1) If in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures

controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;

- 2) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident.
- 3) If no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*).

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

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

1. if the Buyer is responsible for the relevant breach, then the Buyer shall be responsible for the Claim Losses;
2. if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and
3. if responsibility is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in Paragraphs 7.2-7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Buyer.

8. Termination

If the Supplier is in material Default under any of its obligations under this Joint Control Agreement, the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 33 (*Termination Rights*).

9. Sub-Processing

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

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

10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

FRAMEWORK SCHEDULE 4 – ANNEX 1

RM6100 TECHNOLOGY SERVICES 3

LOT 4 CALL OFF TERMS

Where an Order Form is issued by the Buyer that refers to the Framework and this Contract, this Contract is made between the Buyer and the Supplier on the date specified on that Order Form. This Contract is subject to the terms set out below.

The Buyer and the Supplier undertake to comply with the provisions of the Schedules and Attachments to the Order Form in the performance of this Contract.

The Supplier shall supply to the Buyer, and the Buyer shall receive and pay for, the Goods and/or Services on the terms of this Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services and/or Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services and/or Goods covered by a valid Order Form.

The Definitions in Schedule 1 along with any defined terms which are defined within any Schedule shall apply to the use of all capitalised terms in this Contract.

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SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

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

1.2 In this Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**"EU References"**) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- (f) the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
- (g) references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- (i) unless otherwise provided and save for references in Annexes 1 to 2 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule or Attachment to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or

Attachment or the Part of the Schedule or Attachment in which the references appear;
and

- (j) references to this Contract are references to this Contract as amended from time to time.

1.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Buyer and the Parties shall update this Contract with a reference to the replacement hyperlink.

1.4 If there is any conflict between the Order Form (including Attachments and any Annexes), these Call Off Terms (including Schedules and its Annexes) and the provisions of the Framework, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Framework, except Framework Schedule 18 (Tender);
- (b) the Order Form and its Attachments (other than Attachment 4.1 (Supplier Solution) and its Annexes) and Schedule 2.2 (Performance Levels) and its Annexes;
- (c) these Call-Off Terms (including the Schedules and their Annexes) (other than Schedule 2.2 (Performance Levels) and its Annexes which is dealt with above in (b)); (d) Attachment 4.1 (*Supplier Solution*) and its Annexes (if any); and
- (e) Framework Schedule 18 (Tender).

1.5 The Schedules and their Annexes and Order Form (including Attachments and their Annexes) form part of this Contract.

1.6 In entering into this Contract, the Buyer is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

- (a) the Buyer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Buyer before the Effective Date) of all relevant details relating to:
 - (i) the Buyer Requirements;

- (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (iii) the operating processes and procedures and the working methods of the Buyer;
 - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Buyer Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Buyer in writing of:
- (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Buyer Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

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

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Buyer represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Contract;
- (b) this Contract is executed by its duly authorised representative;

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

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract;
- (e) it has notified the Buyer in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract;
- (i) it has notified the Buyer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax NonCompliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier

(and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;

- (k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (n) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Buyer may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

- 4.1 This Contract shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Contract*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Buyer elects to extend the Initial Term by giving the Supplier at least 180 Days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Contract*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Buyer of the Guarantee (the "**Condition Precedent**"). The Buyer may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Buyer in accordance with Clause 4.2:
- (a) this Contract shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Buyer in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Buyer fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall provide:
- (a) the Implementation Services from (and including) the Implementation Services Commencement Date; and

- (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
- (b) where:
 - (i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Buyer was receiving immediately prior to that Operational Service Commencement Date (such similar services being “**Preceding Services**”); and
 - (ii) the standard and level of service received by the Buyer in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Buyer in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

- (a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Buyer IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and

- (b) deliver the Services using efficient business processes and ways of working having regard to the Buyer's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Buyer Representative in writing of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Buyer Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Buyer 3 months before the release of any new Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Buyer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Buyer Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Buyer) and will be Euro Compliant;
- (d) minimise any disruption to the Services, the IT Environment and/or the Buyer's operations when carrying out its obligations under this Contract;

- (e) ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Buyer and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Buyer on the Buyer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
- (i) provide the Buyer with such assistance as the Buyer may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- (k) notify the Buyer in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (l) notify the Buyer in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Buyer; and
- (n) manage closure or termination of Services and end of life of Goods to take account of the Buyer's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

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

5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Buyer howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Buyer where practicable or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Buyer; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Buyer howsoever arising, the Supplier warrants to the Buyer that all components of the Specially Written Software shall:

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

Continuing obligation to provide the Services

5.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- (a) any withholding of the Service Charges by the Buyer pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (b) the existence of an unresolved Dispute; and/or (c) any failure

by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

5.10 The Buyer may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Buyer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Buyer from receiving services that are the same as or similar to the Optional Services from any third party.

5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

5.12 Following receipt of the Buyer's notice pursuant to Clause 5.10:

- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
- (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and
- (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Paragraphs 3 and 4 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form.

Power of attorney

5.13 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Buyer as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Buyer and may vary or revoke such delegation at any time. **Buyer Responsibilities**

5.14 The Buyer shall comply with its responsibilities set out in Schedule 3 (*Buyer Responsibilities*).

6 IMPLEMENTATION

Quality Plans

6.1 The Supplier shall develop, within 30 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2 The Supplier shall obtain the Buyer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Buyer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

6.3 Following the approval by the Buyer of the Quality Plans:

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and

- (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
 - (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
 - (a) it shall:
 - (i) notify the Buyer in accordance with Clause 27.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

- 7.1 The Supplier shall:
 - (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
 - (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:
 - (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);

- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify the Buyer of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Buyer may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Buyer, at which point the Buyer shall pay the amount withheld.

7.3 Service Credits shall be the Buyer's exclusive financial remedy for a KPI Failure except where:

- (a) the Supplier has over the previous 12-months period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (iii) results in:
 - (A) the corruption or loss of any Buyer Data (in which case the remedies under Clause 20.7 (*Buyer Data and Security Requirements*) shall also be available); and/or
 - (B) the Buyer being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (d) the Buyer is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- (a) the Buyer shall (subject to the Service Credit Cap set out in Clause 25.4(b) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and

- (b) if the Buyer withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Buyer may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 7.6** If a Critical Performance Failure occurs, the Buyer may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 33.1 or 33.2 (*Termination by the Buyer*).

Changes to Performance Indicators and Service Credits

- 7.7** Not more than once in each Contract Year the Buyer may, on giving the Supplier at least 3 months' notice:

- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Buyer shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

- 7.8** The Supplier shall not be entitled to object to any changes made by the Buyer under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

- (a) the total number of Key Performance Indicators does not exceed 20;
- (b) 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
- (c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

- 8.1** The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Buyer which the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Buyer which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Buyer; and/or
 - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Buyer shall be sufficient for the Buyer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Buyer requests.
- 8.3 If the Buyer wishes to incorporate any improvement identified by the Supplier the Buyer shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Buyer. Once the Maintenance Schedule has been agreed with the Buyer Representative, the Supplier shall only

undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.

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

9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

9.7 Where, as part of the Services, the Supplier is to sell goods or equipment (“**Goods**”) to the Buyer:

- (a) the relevant Goods and their prices shall be as set out in the Order Form;
- (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
- (d) if following inspection or testing the Buyer considers that the Goods do not conform with the relevant specification, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- (e) without prejudice to any other rights or remedies of the Buyer:
 - (i) risk in the Goods shall pass to the Buyer at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Buyer at the time of payment.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Buyer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*)

10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*) and Clause 30 (*Step-In Rights*).

10.3 If the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.

10.5 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Buyer not less than five Working Days before the date upon which the tax or other liability is payable by the Buyer.

Set-off and Withholding

10.6 The Buyer may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.

10.7 If the Buyer wishes to:

- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier pursuant to Clause 10.6; or
- (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Buyer's reasons for withholding or retaining the relevant Charges.

Benchmarking

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

Financial Distress

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

Promoting Tax Compliance

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Buyer in writing of such fact within 5 Working Days of its occurrence; and (b) promptly provide to the Buyer:

- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Buyer may reasonably require.

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Contract.

Representatives

11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.

11.3 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The initial Buyer Representative shall be the person named as such in the Order Form. The Buyer may, by written notice to the Supplier, revoke or amend the authority of the Buyer Representative or appoint a new Buyer Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of

- (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
- (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
- (b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Buyer or any Audit Agents.

13 CHANGE**Change Control Procedure**

13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b), the Supplier shall:

- (a) notify the Buyer as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- (b) provide the Buyer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**14 SUPPLIER PERSONNEL**

14.1 The Supplier shall:

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

14.2 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

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

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Attachment 9.2 (*Key Personnel*) of the Order Form lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

- 14.4 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Buyer;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Subcontractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Buyer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify the Buyer promptly of the absence of any Key Personnel (other than for shortterm sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

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

- (b) the Buyer shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

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

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause 15.1(c) to the Buyer in the format and frequency as reasonably specified by the Buyer; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Buyer may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

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

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

15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:

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

15.7 If requested by the Buyer within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:

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

15.8 The Buyer may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*); in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

- (a) the Buyer has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.6; and
 - (ii) any further information requested by the Buyer pursuant to Clause 15.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 10.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Buyer that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Attachment 4.4 (*Third Party Contracts*) of the Order Form.

Appointment of Key Sub-contractors

15.10A The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-contractors listed in Framework Schedule 7 (Key Sub-Contractors) where such Key Sub-contractors are set out in the Order Form.

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

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Buyer;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*).

15.11 The Buyer consents to the appointment of the Key Sub-contractors listed in Attachment 4.3 (*Notified Key Sub-contractors*).

15.12 Except where the Buyer has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
- (b) a right under CRTPA for the Buyer to enforce any provisions under the Key Subcontract which are capable of conferring a benefit upon the Buyer;
- (c) a provision enabling the Buyer to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Buyer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Buyer;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Buyer Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute set out in Clause 5.5(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses

33.1(a) (*Termination by the Buyer*) and 34.4 (*Payments by the Buyer*) and Schedule 7.2 (*Payments on Termination*) of this Contract;

- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Buyer;
- (h) a provision enabling the Supplier or the Buyer to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Buyer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Buyer in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Buyer in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Buyer to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

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

Supply chain protection

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

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Buyer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.15 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.15(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.16 Without prejudice to Clause 15.15(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Subcontractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.16(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.17 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the

Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest Balanced Scorecard Report an action plan (the “Action Plan”) for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- (b) actions to address each of the causes set out in sub-paragraph (a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.

15.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.

15.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Subcontractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

15.20 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Buyer as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included).

15.21 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Buyer (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor’s undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.22 The Buyer may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Buyer’s right of termination pursuant to Clause 33.1(b) (*Termination by the Buyer*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-contractor’s obligations in relation to the Services or otherwise;

- (iii) the relevant Sub-contractor has failed to comply in the performance of its Subcontract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Buyer has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.27; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Buyer has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Buyer was given notice of the Change of Control.

Competitive Terms

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

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

15.24 If the Buyer exercises either of its options pursuant to Clause 15.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

15.25 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to:

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

Retention of Legal Obligations

15.26 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the

Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

15.27 Where the Buyer considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Buyer finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Buyer finds there are non-compulsory grounds for exclusion, the Buyer may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

15.28 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Buyer thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records Provisions) Annex 4 and in accordance with any guidance issued by the Buyer from time to time.

15.29 The Buyer may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Contract:

- (a) the Buyer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including:
 - (i) the Buyer Software;

- (ii) the Buyer Data; and
 - (iii) the Buyer Background IPRs;
 - (c) Specially Written Software and Project Specific IPRs (except for any KnowHow, trade secrets or Confidential Information contained therein) shall be the property of the Buyer.
- 16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 16.3 Neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 16.4 Unless the Buyer otherwise agrees in advance in writing:
- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software; and
 - (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer.
- 16.5 Where the Buyer agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Buyer's ability to publish other Open Source software under Clause 19A (*Open Source Publication*).

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 17.1 Subject to Clause 17.17 (*Patents*) the Supplier hereby agrees to transfer to the Buyer, or shall procure the transfer to the Buyer of, all rights (subject to Clause 16.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"); but not including any Know-How, trade secrets or Confidential Information.
- 17.2 The Supplier: (a)

shall:

- (i) inform the Buyer of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Buyer the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer; and
 - (iii) without prejudice to Clause 17.11 (*Third Party Software and Third Party IPRs*), provide full details to the Buyer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 17.2(a)(ii) shall vest in the Buyer upon their receipt by the Buyer; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Buyer.

Supplier Software and Supplier Background IPRs

17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Attachment 5 (*Software*) of the Order Form or sent to the Technical Board for review and approval granted by the Buyer.

17.4 The Supplier hereby grants to the Buyer:

- (a) subject to the provisions of Clause 17.17 (*Patents*) and Clause 1.1(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Buyer for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Buyer and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always

that the Buyer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 (*Buyer's right to sub-licence*) and 17.8 (*Buyer's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

- (c) a perpetual royalty-free non-exclusive licence to use without limitation any KnowHow, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

17.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Buyer or any person to whom the Buyer grants a sub-licence pursuant to Clause 17.7 (*Buyer's right to sub-licence*) commits any material breach of the terms of Clause 17.4(a)(i) or 17.4(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

17.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.5, the Buyer shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier NonCOTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Buyer may

destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Buyer's right to sub-licence

17.7 Subject to Clause 17.17 (*Patents*) the Buyer may sub-licence:

- (a) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Buyer;

- (ii) the sub-licence authorises the third party to use the rights licensed in Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
- (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and
- (b) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Buyer; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Buyer's right to assign/novate licences

17.8 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*)

to:

- (a) a Central Government Body; or
- (b) to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

17.9 Any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*). If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*).

17.10 If a licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.8 (*Buyer's right to assign/novate licences*) or there is a change of the Buyer's status pursuant to Clause 17.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Buyer.

Third Party Software and Third Party IPRs

17.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Attachment 5 (*Software*) of the Order Form or approval is granted by the Buyer following a review by the Technical Board and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Buyer on a royalty-free basis to the Buyer and on terms no less favourable to the Buyer than those set out in Clauses 17.4(a) and 17.5 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8 (*Buyer's right to assign/novate licences*); or
- (b) complied with the provisions of Clause 17.12.

17.12 If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.11(a), the Supplier shall:

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

17.13 The Supplier shall:

- (a) notify the Buyer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Buyer in any case within 20 Working Days of notification pursuant to Clause 17.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Buyer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

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

Termination and Replacement Suppliers

17.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.16 The Supplier shall, if requested by the Buyer in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:

- (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Buyer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Supplier;
- (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

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

18 LICENCES GRANTED BY THE BUYER

18.1. The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Buyer Software, the Buyer Background IPRs, the Specially Written Software, the Project Specific IPRs and the Buyer Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
- (b) the Supplier shall not, without the Buyer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.

18.2. In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- (a) immediately cease all use of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be);
- (b) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data, provided that if the Buyer has not made an election within 6 months of

the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Buyer Software, Buyer Background IPRs and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Buyer Software, Buyer Background IPRs and/or Buyer Data.

19 IPRs INDEMNITY

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Buyer and each other Indemnified Person, and keep the Buyer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Buyer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Buyer or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Buyer may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19A OPEN SOURCE PUBLICATION

19A.1 The Supplier agrees that the Buyer may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.

- 19A.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Buyer System;
 - (b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - (c) do not contain any material which would bring the Buyer into disrepute upon publication as Open Source;
 - (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
 - (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.
- 19A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Buyer does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Buyer and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Buyer when publishing as Open Source.
- 19A.4 The Supplier hereby indemnifies the Buyer against all claims in which the Buyer is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-clause 19A.1.

20 BUYER DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer.
- 20.3 To the extent that Buyer Data is held and/or processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer in the format specified in Attachment 2.1 (*Services Description*) of the Order Form.
- 20.4 The Supplier shall preserve the integrity of Buyer Data and prevent the corruption or loss of Buyer Data at all times that the relevant Buyer Data is under its control or the control of any Sub-contractor.

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

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

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

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

20.8 If at any time the Supplier suspects or has reason to believe that Buyer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Buyer immediately and inform the Buyer of the remedial action the Supplier proposes to take.

20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).

20.10 The Buyer shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

20.12 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to Clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

20.13 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:

- (a) (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy, (commonly referred to as List X). Further information on List X accreditation can be found

at: <https://www.gov.uk/government/publications/security-policy-framework>; and

- (b) a number of UK national security cleared personnel prior to the Effective Date.

20.14 If the Supplier fails to comply with Clause 20.13 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 33.1.

21 CONFIDENTIALITY

21.1 For the purposes of this Clause 21, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

- (c) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored, and the nature of the Confidential Information contained in those materials);
- (d) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- (e) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
- (f) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (Transparency and *Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
 - (ii) the examination and certification of the Buyer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer is making use of any Services provided under this Contract; or

- (iii) the conduct of a Central Government Body review in respect of this Contract;
or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Buyer on a confidential basis only to:
 - (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 21.5, it 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.

- 21.6 The Buyer may disclose the Confidential Information of the Supplier:
 - (a) on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 21.

21.7 Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or knowhow gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that

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

(together the “**Transparency Information**”) are not Confidential Information.

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

22.3 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records Provisions).

22.4 If the Buyer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Buyer shall be entitled to exclude such information from publication. The Buyer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Buyer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

22.5 The Buyer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Buyer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Buyer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Buyer within five (5) Working Days (or such other period as the Buyer may reasonably specify) any such Information requested by the Buyer.
- 22.7 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Buyer with a copy of all Information held on behalf of the Buyer which is requested in a Request For Information and which is in its possession or control in the form that the Buyer requires within 5 Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and
 - (d) not respond directly to a Request for Information addressed to the Buyer unless authorised in writing to do so by the Buyer.
- 22.8 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23 PROTECTION OF PERSONAL DATA

Status of the Controller

- 23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (e) **"Controller"** (where the other Party acts as the **"Processor"**);
 - (f) **"Processor"** (where the other Party acts as the **"Controller"**);
 - (g) **"Joint Controller"** (where both Parties are considered to jointly control the same Personal Data);

- (h) “**Independent Controller**” of the Personal Data where the other Party is also “**Controller**” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Attachment 11 (*Processing Personal Data*) of the Order Form which scenario or scenarios are intended to apply under this Contract. **Where one Party is Controller and the other Party its Processor**

23.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Attachment 11 (*Processing Personal Data*) of the Order Form by the Controller.

23.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

23.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Attachment 11 (*Processing Personal Data*) of the Order Form, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 20 (*Buyer Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Attachment 11 (*Processing Personal Data*));

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 21 (*Confidentiality*) and 20 (*Buyer Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

23.6 Subject to Clause 23.7, the Processor shall notify the Controller immediately if it:

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

23.7 The Processor's obligation to notify under Clause 23.6 shall include the provision of further information to the Controller in phases, as details become available.

23.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

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

23.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

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

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

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

23.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

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

23.14 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms

forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 23.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

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

Where the Parties are Independent Controllers of Personal Data

- 23.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 23.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 23.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 23.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 23.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 23.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Attachment 11 (*Processing Personal Data*) of the Order Form.
- 23.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

- 23.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 23.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the Request Recipient"):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 23.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 23.26 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 Attachment 11 (Processing Personal Data).
- 23.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Attachment 11 (Processing Personal Data) of the Order Form.
- 23.28 Notwithstanding the general application of Clauses 23.2 to 23.15 to Personal Data, where the

Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 23.16 to 23.27.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

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

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

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

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Neither Party limits its liability for:

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

25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19.1 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

25.3 The Buyer's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

25.4 Subject to Clauses 25.1 and 25.2 (*Unlimited Liability*) and Clauses 25.7 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Buyer Premises or other property or assets of the Buyer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Buyer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) the Supplier's aggregate liability in respect of loss of or damage to Buyer Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (c) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;

incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Buyer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 25.4(d) have been incurred by the Buyer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c).

25.6 Subject to Clauses 25.1 and 25.3 (*Unlimited Liability*) and Clause 25.7(*Consequential Losses*) and without prejudice to the Buyer's obligation to pay the Charges as and when they fall due for payment:

- (a) the Buyer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Buyer pursuant to Clause 33.1(a) (*Termination by the Buyer*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

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

Consequential Losses

25.7 Subject to Clauses 25.1, 25.2 and 25.3 (*Unlimited Liability*) and Clause 25.8, neither Party shall be liable to the other Party for:

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

25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Buyer, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- (d) any compensation or interest paid to a third party by the Buyer;

- (e) any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty; and
- (f) any anticipated savings identified in Attachment 7.6 (*Anticipated Savings*) of the Order Form. **Conduct of indemnity claims**

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

Mitigation

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

26 INSURANCE

26.1 Without limitation to the generality of Clause 26.2, the Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.

26.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance Requirements), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

SECTION H – REMEDIES AND RELIEF

27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) in any Service Period there has been:
 - (i) a Material KPI Failure; and/or
 - (ii) a Material PI Failure; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Buyer of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Buyer may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process. **Notification**

27.2 If:

- (a) the Supplier notifies the Buyer pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- (b) the Buyer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Buyer serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

27.3 The “**Rectification Plan Process**” shall be as set out in Clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Contract of the Rectification Plan*).

Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

(a) full details of the Notifiable Default that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the Notifiable Default; and

(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).

27.6 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Contract of the Rectification Plan

27.7 The Buyer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Buyer.

27.8 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan, the Buyer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Buyer for review within 5 Working Days (or such other period as agreed between the Parties) of the Buyer's notice rejecting the first draft.

27.9 If the Buyer consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Buyer may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default; save in the event of a Rectification Plan Failure or other Supplier Termination Event.

28 DELAY PAYMENTS

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

28.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- (e) the Buyer is entitled to or does terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*); or
- (f) the Delay exceeds the Delay Deduction Period.

29 **REMEDIAL ADVISER**

29.1 If:

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

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

- (i) a meeting between the Buyer Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Buyer has no obligation to exercise its rights under this Clause 29.1 prior to or instead of exercising its right to terminate this Contract.

29.2 If the Buyer gives notice that it requires the appointment of a Remedial Adviser: (a) the Remedial Adviser shall be:

- (i) a person selected by the Supplier and approved by the Buyer; or
- (ii) if none of the persons selected by the Supplier have been approved by the Buyer (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Buyer;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Buyer; and
- (c) any right of the Buyer to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).

29.3 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing

the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

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

29.4 The Supplier shall:

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

29.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Buyer and/or the Remedial Adviser pursuant to this Clause 29.

29.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Buyer in an Intervention Notice; and/or

(ii) is in Default of any of its obligations under Clause 29.4; and/or

(b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a **“Remedial Adviser Failure”**), the Buyer shall be entitled to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*).

30 STEP-IN RIGHTS

30.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a **“Step-In Notice”**) that it will be taking action under this Clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Buyer wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
- (b) the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Buyer will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

30.2 Following service of a Step-In Notice, the Buyer shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Clause 30.

30.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
- (c) the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.

30.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,
- beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

30.5 Before ceasing to exercise its step in rights under this Clause 30 the Buyer shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Buyer plans to end the Required Action (the **"Step-Out Date"**) subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.

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

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

30.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 30, 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:

- (c) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (d) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

31 BUYER CAUSE

31.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;

- (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Contract,

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

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Buyer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

- (i) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Buyer Cause;
- (ii) the Buyer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*); or
 - (B) to take action pursuant to Clauses 29 (*Remedial Adviser*) or 30 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Buyer Cause;
 - (B) if the Buyer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Buyer Cause;
 - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Buyer Cause; and
 - (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Buyer shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
 - (C) the Buyer shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to

Clause 7.4(a) (*Unacceptable KPI Failure*); and

- (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Buyer Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Buyer Cause.

31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Buyer Cause has caused, or is reasonably likely to cause, a Supplier NonPerformance, give the Buyer notice (a **“Relief Notice”**) setting out details of:

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

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

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

31.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Buyer Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 31 shall be implemented in accordance with the Change Control Procedure.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause 32 from liability for failure to

meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

32.2 The Affected Party shall as soon as reasonably possible issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated, but the Supplier has failed to do so;
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
- (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

32.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to

Clause 33.1(c) (*Termination by the Buyer*) or Clause 33.3(b) (*Termination by the Supplier*); and

- (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Contract:
 - (i) the Buyer shall not be entitled:

- (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Clause 30 (*Step-in Rights*) as a result of such failure;
- (B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
- (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

(ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 32.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Buyer

33.1 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier:

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

33.2 Where the Buyer:

- (a) is terminating this Contract under Clause 33.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Contract under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

33.3 The Supplier may, by issuing a Termination Notice to the Buyer, terminate:

- (a) this Contract if the Buyer fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £273,977.46 and such amount remains outstanding 40 Working Days after the receipt by the Buyer of a notice of nonpayment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (*Partial Termination*) shall apply.

Partial Termination

33.4 If the Supplier notifies the Buyer pursuant to Clause 33.3(b) (Termination by the Supplier) that it intends to terminate this Contract in part and the Buyer, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Buyer Requirements, then the Buyer shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of the Buyer Requirements, regard shall be had not only to the proportion of that part to the Buyer Requirements as a whole, but also to the importance of the relevant part to the Buyer.

33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

- (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

34.1 The provisions of Clauses 5.8 (Specially Written Software warranty), 10.4 and 10.5 (VAT), 10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), 17 (Licences Granted by the Supplier), 19.1 (IPRs Indemnity), 21 (Confidentiality), 22 (Transparency and Freedom of Information), 23 (Protection of Personal Data), 25 (Limitations on Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Contract), 43 (Third Party Rights), 45 (Disputes) and 46 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.5 (Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Contract.

Exit Management

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

Payments by the Buyer

34.3 If this Contract is terminated by the Buyer pursuant to Clause 33.1(a) (Termination by the Buyer) or by the Supplier pursuant to Clause 33.3(a) (Termination by the Supplier), the Buyer

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

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:
 - (i) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Buyer pursuant to Clause 33.1(a) (*Termination by the Buyer*) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Buyer referred to in Clause 33.3(a) (*Termination by the Supplier*) to (and including) the Termination Date.

34.4 If this Contract is terminated (in part or in whole) by the Buyer pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (Termination by the Buyer), or the Term expires, the only payments that the Buyer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and

- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

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

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Buyer*) or 33.3(b) (*Termination by the Supplier*); or
- (b) the Buyer terminates this Contract under Clause 33.1(d) (*Termination by the Buyer*).

Payments by the Supplier

34.6 In the event of termination or expiry of this Contract, the Supplier shall repay to the Buyer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

34.7 If this Contract is terminated (in whole or in part) by the Buyer pursuant to Clause 33.1(b) (*Termination by the Buyer*) prior to Achievement of one or more CPP Milestones, the Buyer may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "Milestone Adjustment Payment Notice") require the Supplier to repay to the Buyer an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

34.8 A Milestone Adjustment Payment Notice shall specify:

- (a) each CPP Milestone to which it relates;
- (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Buyer wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
- (c) those Retained Deliverables, if any, the Allowable Price for which the Buyer considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"), and may form part of a Termination Notice.

34.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

- (a) notify the Buyer whether it agrees that the Retained Deliverables which the Buyer considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Buyer of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;

- (c) provide the Buyer with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
 - (d) provide the Buyer with such supporting information as the Buyer may require.
- 34.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 34.11 If the Buyer issues a Milestone Adjustment Payment Notice pursuant to Clause 34.7:
- (a) the Buyer shall:
 - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and
 - (b) all licences granted pursuant to Clause 17 (*Licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J - MISCELLANEOUS AND GOVERNING LAW**35 COMPLIANCE****Health and Safety**

35.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Buyer Premises.

35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Buyer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

35.3 The Supplier shall:

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

Official Secrets Act and Finance Act

35.4 The Supplier shall comply with the provisions of: (a)

the Official Secrets Acts 1911 to 1989; and

- (b) section 182 of the Finance Act 1989.

36 ASSIGNMENT AND NOVATION

36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.

36.2 The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer,

and the Supplier shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 36.2.

36.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

36.4 If the Buyer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Buyer (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Buyer under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

37.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

38 RELATIONSHIP OF THE PARTIES

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

39 PREVENTION OF FRAUD AND BRIBERY

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

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

39.2 The Supplier shall not during the term of this Contract:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Buyer or any of the Buyer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

39.3 The Supplier shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Buyer on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

39.4 The Supplier shall immediately notify the Buyer in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

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

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

39.5 If the Supplier makes a notification to the Buyer pursuant to Clause 39.4, the Supplier shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Records, Reports, Audits and Open Book Data).

39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Buyer may by notice:

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

39.7 Any notice served by the Buyer under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Buyer believes has committed the Prohibited Act and the action that the Buyer has elected to take (including, where relevant, the date on which this Contract shall terminate).

40 SEVERANCE

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

40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

40.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 40.3.

41 FURTHER ASSURANCES

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

42 ENTIRE AGREEMENT

- 42.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

- 43.1 The provisions of Clause 19.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together “Third Party Provisions”) confer benefits on persons named 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 CRTPA.
- 43.2 Subject to Clause 43.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 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.
- 43.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44 NOTICES

- 44.1 Any notices sent under this Contract must be in writing.
- 44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct email address without any error message.

Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

44.3 Notices For the purposes of this Clause 44, the address and email address of each Party shall be the address and email address set out in the Order Form.

44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 44.2:

- (c) Step-In Notices;
- (d) Force Majeure Notices;
- (e) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*);
- (f) Termination Notices; and
- (g) Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

45 DISPUTES

45.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

46 GOVERNING LAW AND JURISDICTION

46.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

46.2 Subject to Clause 45 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Buyer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1**Definitions**

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements;
“Achieve”	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (<i>Testing Procedures</i>), and “Achieved” and “Achievement” shall be construed accordingly;</p>
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	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 with, that body corporate from time to time;
“Allowable Assumptions”	the assumptions set out in Part D of Attachment 7.1 (<i>Charges and Invoicing</i>) of the Order Form;
“Allowable Price”	<p>in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and</p> <p>(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,</p>

	provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;
“Allowable Price Adjustment”	has the meaning given in Clause 34.8(c) (<i>Payments by the Supplier</i>);
“Annual Contract Report”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <p>(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and</p> <p>(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;</p>
“Anticipated Contract Life Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Approved Sub-Licensee”	<p>any of the following:</p> <p>(a) a Central Government Body;</p> <p>(b) any third party providing services to a Central Government Body; and/or</p> <p>(c) anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer;</p>
“Attachment”	an attachment to the Order Form;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Buyer Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”	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;
“Assurance”	means written confirmation from a Relevant Buyer to the Supplier that the CRP Information is approved by the Relevant Buyer;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
“Audit”	any exercise by the Buyer of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none"> (a) the Buyer’s internal and external auditors; (b) the Buyer’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Authority”	means the Buyer
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Buyer, provided by the Buyer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2.2 (<i>Performance Levels</i>);
“Baseline Security Requirements”	the Buyer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>), as updated from time to time by the Buyer and notified to the Supplier;
“Board”	means the Supplier’s board of directors;

“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (Financial Distress);
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Buyer”	means the entity identified as such in the Order Form;
“Buyer Assets”	the Buyer Materials, the Buyer infrastructure and any other data, software, 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 or receipt of the Services, details of which are set out in the Order Form;
“Buyer Background IPRs”	<ul style="list-style-type: none"> (a) IPRs owned by the Buyer before the Effective Date, including IPRs contained in any of the Buyer's Know-How, documentation, processes and procedures; (b) IPRs created by the Buyer independently of this Contract; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Contract; but excluding IPRs owned by the Buyer subsisting in the Buyer Software;
“Buyer Cause”	<p>material breach by the Buyer of any of the Buyer Responsibilities, pt to excethe extent that such breach is:</p> <ul style="list-style-type: none"> (a) the result of any act or omission by the Buyer to which the Supplier has given its prior consent; or (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
“Buyer Data”	<ul style="list-style-type: none"> (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, and which are: <ul style="list-style-type: none"> (i) supplied to the Supplier by or on behalf of the Buyer; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Buyer is the Data Controller;

“Buyer IT Strategy”	the Buyer's IT policy 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 Change Control Procedure;
“Buyer Materials”	<p>the Buyer Data together with any materials, documentation, information, programs and codes supplied by the Buyer to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Buyer; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
“Buyer Premises”	premises owned, controlled or occupied by the Buyer and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“Buyer Representative”	the representative appointed by the Buyer (as may be changed from time to time in accordance with Clause 11.4, the details of which as at the Effective Date are set out in the Order Form;
“Buyer Requirements”	the requirements of the Buyer set out in Attachment 2.1 (<i>Services Description</i>), Schedule 2.2 (<i>Performance Indicators</i>), Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>), Schedule 2.3 (<i>Standards</i>), Attachment 2.3 (<i>Environmental Requirements</i>), Schedule 2.4 (<i>Security Management</i>), the Order Form in respect of insurance, Schedule 6.1 (<i>Implementation Plan</i>), Attachment 6.1 (<i>Outline Implementation Plan</i>), Schedule 8.4 (<i>Reports and Records Provisions</i>), Attachment 8.4 (<i>Transparency Reports and Records to Upload to Virtual Library</i>), Schedule 8.5 (<i>Exit Management</i>) and Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Buyer Responsibilities”	the responsibilities of the Buyer specified in Attachment 3 (Specific Obligations) of the Order Form;
“Buyer Software”	software which is owned by or licensed to the Buyer (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;

“Buyer System”	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 the Buyer or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;
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“Cabinet Office Markets and Suppliers Team”	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Call Off Terms”	means these terms and conditions;
“CCS”	means Crown Commercial Service, the authority to the Framework;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Certificate of Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;

“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) and Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form, including any Milestone Payment or Service Charge;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Buyer;

“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	<p>the information listed in Attachment 4.2 (<i>Commercially Sensitive Information</i>) of the Order Form comprising the information of a commercially sensitive nature relating to –</p> <p>(a) the pricing of the Services;</p> <p>(b) details of the Supplier’s IPRs; and</p> <p>(c) the Supplier’s business and investment plans;</p> <p>which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4(a) (<i>Unacceptable KPI Failure</i>);
“Compensation Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Condition Precedent”	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);

<p>“Confidential Information”</p>	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:</p> <p>(i) the Disclosing Party Group; or</p> <p>(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;</p> <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Contract;</p> <p>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its</p>
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	<p>directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and</p> <p>(d) Information derived from any of the above,</p> <p>but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</p> <p>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier’s:</p> <ol style="list-style-type: none"> 1. performance under this Contract; or 2. failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (<i>Supply Chain Protection</i>);
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“Contract”	the contract between the Buyer and the Supplier (entered into pursuant to the terms of the Framework) consisting of: (a) the Order Form; and (b) the Call Off Terms;
“Contract Change”	any change to this Contract other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form agreed by the Supplier and the Buyer in writing on or before the Effective Date;
“Contract Finder”	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
“Contract Year”	(a) a period of 12 months commencing on the Effective Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the expiry or termination

	of the Term;
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the GDPR;

“Corporate Change Event”	<p>means:</p> <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p> <p>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;</p> <p>(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;</p> <p>(d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;</p> <p>(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;</p> <p>(f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;</p> <p>(g) an order is made, or an effective resolution is passed for the winding up of any member of the Supplier Group;</p> <p>(h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;</p> <p>(i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or</p> <p>(j) any process or events with an effect analogous to those in</p>
	<p>paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;</p>
“Corporate Resolution Planning Information”	<p>means, together, the:</p> <p>a) Group Structure Information and Resolution Commentary; and</p> <p>b) UK Public Sector and CNI Contract Information;</p>
“Costs”	<p>has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);</p>

“CPP Milestone”	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (<i>Testing Procedures</i>) and Paragraph 2 of Attachment 2 (<i>Test Success Criteria</i>) of the Order Form;
“Critical National Infrastructure”	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	(a) the Supplier accruing a Repeat Failure Count of four (4) or more; or (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Buyer and specified in Paragraph 10.1 of Part 2 to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	the Contracts (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 Supplier under this Contract, and/or actual or potential
	loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation”	<ul style="list-style-type: none"> a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; c) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Buyer under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Buyer, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Buyer Requirements or the Documentation (including any adverse effect on response times)
	regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; 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 Buyer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
“Delay”	(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;
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Buyer in respect of a Delay in Achieving a Key Milestone as specified in Table 1 of Part B of Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form;
“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;
“Dependent Parent Undertaking”	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;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (<i>Implementation Plan</i>);
“Disclosing Party”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
	(b) where the Disclosing Party is the Buyer, the Buyer and any Central Government Body with which the Buyer or the Supplier interacts in connection with this Contract;

“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Buyer under this Contract; (b) 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 Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
“DOTAS”	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 by the National Insurance Contributions (Application of
	Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“DPA”	the Data Protection Act 2018;

“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
“Effective Date”	<p>the later of:</p> <p>(a) the date on which the Order Form is signed by both Parties; and</p> <p>(b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (Condition Precedent);</p>
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Emergency Maintenance”	<p>ad hoc and unplanned maintenance provided by the Supplier where:</p> <p>(a) the Buyer reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</p> <p>(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;</p>
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <p>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p> <p>(b) unfair, wrongful or constructive dismissal compensation;</p> <p>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p> <p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p>

	<p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Estimated Year 1 Charges”	the estimated Charges payable by the Buyer during the first Contract Year, as set out in the Financial Model;
“Estimated Initial Service Charges”	the estimated Service Charges payable by the Buyer during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;
“Euro Compliant”	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Buyer’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <p>(a) be able to perform all such functions in any number of currencies and/or in euros;</p> <p>(b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;</p> <p>(c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;</p> <p>(d) incorporate protocols for dealing with rounding and currency conversion;</p> <p>(e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and</p>

	(f) permit the input of data in euro and display an outcome in euro where such data, supporting the Buyer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Buyer and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert"	has the meaning given in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Extension Period"	a period set out in the Order Form (in years) from the end of the Initial Term;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs;
"Financial Model"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Financial Reports"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Financial Transparency Objectives"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"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 any relevant Central Government Body in relation to such Act;

“Force Event”	Majeure	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable
		control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Subcontractor’s supply chain;
“Force Notice”	Majeure	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;
“Former Supplier”		has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Framework”		the framework agreement reference RM6100 between the Supplier and CCS
“GDPR”		The General Data Protection Regulation (EU) 2016/679
“General Abuse Rule”	Anti-	<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>
“General Change in Law”		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;
“Good Practice”	Industry	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Buyer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”		has the meaning given in Clause 9.7 (<i>Supply of Goods</i>);
“Group Information and Resolution Commentary”	Structure	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);

“Guarantee”	the deed of guarantee in favour of the Buyer entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Buyer that replaces it from time to time;
“Guarantor”	not applicable

“Halifax Principle”	Abuse the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Buyer and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Buyer pursuant to Paragraph 3 of Schedule 6.1 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being 28 November 2022;
“Indemnified Person”	the Buyer and each and every person to whom the Buyer (or any direct or indirect sublicensee of the Buyer) sublicenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;

“Independent Control”	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period set out in the Order Form from and including the Effective Date;
“Initial Upload Date”	means the occurrence of an event detailed in Part B of Attachment 8.4 (<i>Transparency Reports and Records to Upload to the Virtual Library</i>) of the Order Form which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

<p>“Insolvency Event”</p>	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (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"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a 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, a LLP or a partnership: <ul style="list-style-type: none"> (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
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	<p>reconstruction of that person;</p> <p>(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;</p> <p>(iii) (being a company or a 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</p> <p>(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</p> <p>any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Intervention Cause”	has the meaning given in Clause 29.1 (Remedial Adviser);
“Intervention Notice”	has the meaning given in Clause 29.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 29.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing a Repeat Failure Count of four (4) or more;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p>

	(e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date.
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Buyer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“IT”	information and communications technology;
“IT Environment”	the Buyer System and the Supplier System;
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing;
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Performance Indicator”	the key performance indicators set out in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Attachment 9.2 (<i>Key Personnel</i>) of the Order Form against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
“Key Roles”	a role described as a Key Role in Attachment 9.2 (<i>Key Personnel</i>) of the Order Form and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of CCS or the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a 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 (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, 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;
“LED”	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
“Licensed Software”	all and any Software licensed by or through the Supplier, its Subcontractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maintenance Schedule”	shall have the meaning set out in Clause 9.4 (<i>Maintenance</i>);
“Malicious Software”	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;

“Management Information”	the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Buyer;
“Material KPI Failure”	<p>(a) a Serious KPI Failure;</p> <p>(b) a Severe KPI Failure; or</p> <p>(c) a failure by the Supplier to meet a KPI Service Threshold;</p>
“Material PI Failure”	<p>(a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or</p> <p>(b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;</p>
“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Buyer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Testing Procedures</i>);
“Milestone Adjustment Payment Amount”	<p>in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and</p> <p>(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;</p>

“Milestone Adjustment Payment Notice”	has the meaning given in Clause 34.7 (<i>Payments by the Supplier</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Table 1 of Part B of Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“month”	a calendar month and “monthly” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Releases”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

“Non-retained Deliverables”	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided
	to the Buyer which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
“Notifiable Default”	shall have the meaning given in Clause 27.1 (<i>Rectification Plan Process</i>);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Buyer successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (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 Buyer under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 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 Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>)
“Open Source”	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;
“Operating Environment”	the Buyer System and the Sites;

“Operational Change”	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <p>(a) will not affect the Charges and will not result in any other costs to the Buyer;</p> <p>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</p>
	(c) will not adversely affect the interfaces or interoperability of the Services with any of the Buyer's IT infrastructure; and will not require a change to this Contract;
“Operational Service Commencement Date”	<p>in relation to an Operational Service, the later of:</p> <p>(a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and</p> <p>(b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;</p>
“Operational Services”	the operational services described as such in the Services Description;
“Optional Services”	the services described as such in Attachment 2.1 (<i>Services Description</i>) of the Order Form which are to be provided by the Supplier if required by the Buyer in accordance with Clause 5.10 (<i>Optional Services</i>);
“Optional Services Implementation Plan”	the implementation plan to affect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Buyer;
“Order”	means the order placed by the Buyer with the Supplier for the provision of the Services in accordance with the Framework and under the terms of this Contract
“Order Form”	the form (based on the template included at Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms)) together with any Attachments, as completed and forming part of this Contract, which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided;

“Other Supplier”	any supplier to the Buyer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Outline Implementation Plan”	the outline plan set out in Attachment 6.1 (<i>Outline Implementation Plan</i>) of the Order Form;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;

“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) (<i>Termination by the Buyer</i>) or 33.3(b) (<i>Termination by the Supplier</i>) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;
“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;

“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Paragraph 2 and/or Paragraph 4 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Processor”	has the meaning given to it under the GDPR;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
“Programme Board”	the body described in Paragraph 5 of Schedule 8.1 (<i>Governance</i>);

“Prohibited Act”	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) an offence:</p> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</p> <p>(ii) under legislation or common law concerning fraudulent acts; or</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
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“Protective Measures:	appropriate technical and organisational measures which may include: 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;
“Project Specific IPRs”	<p>(a) Intellectual Property Rights 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 (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;

“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the tables in Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators Tables) of the Order Form which shall not constitute Commercially Sensitive Information;
“Quality Plans”	has the meaning given in Clause 6.1 (<i>Quality Plans</i>);
“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);
“Recipient”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);

“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Buyer within the timescales specified in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Contract of the Rectification Plan</i>);</p> <p>(b) the Buyer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.7 (<i>Contract of the Rectification Plan</i>);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:</p> <p>(i) 30 Working Days of a notification made pursuant to Clause 27.2 (<i>Notification</i>); and</p> <p>(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;</p> <p>(d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the</p>

	<p>Measurement Period in which the initial Material KPI Failure occurred;</p> <p>(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or</p> <p>(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;</p>
“Rectification Plan Process”	the process set out in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) to 27.9 (<i>Contract of the Rectification Plan</i>);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Reimbursable Expenses”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Relevant Buyer” or “Relevant Authorities”	means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Buyer Software, the Buyer Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
“Relevant Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Buyer”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 31.2 (<i>Buyer Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 29.2 (<i>Remedial Adviser</i>);

“Remedial Adviser Failure”	has the meaning given in Clause 29.6 (<i>Remedial Adviser</i>);
Repeat KPI Failure	a KPI Failure occurred in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any consecutively subsequent such KPI Failure of the same Key Performance Indicator
Repeat Failure Count	number of sequential Repeat KPI Failures for each KPI
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Buyer internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer);

“Request Information”	for	a Request for Information under the FOIA or the EIRs;
“Required Action”		has the meaning given in Clause 30.1(a) (<i>Step-In Rights</i>);
“Retained Deliverables”		has the meaning given in Clause 34.8(b) (<i>Payments by the Supplier</i>);
“Risk Register”		the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Part C of Attachment 7.1 (<i>Charges and Invoicing</i>) of the Order Form;
“Security Management Plan”		has the meaning given to it in Schedule 2.4 (<i>Security Management</i>);
“Serious Failure”	KPI	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Service Charges”		the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Continuity Plan”		any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;

“Service Continuity Services”		the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Service Credit Cap”	Credit	<p>(a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, 15% of the Estimated Initial Service Charges; and</p> <p>(b) during the remainder of the Term, 15% of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;</p>
“Service Credits”		credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);

“Service Period”	<p>a calendar month, save that:</p> <p>(a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and</p> <p>(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;</p>
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Services”	any and all of the services to be provided by the Supplier under this Contract, including those set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Services Description”	the services description set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Sites”	<p>any premises (including the Buyer Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Buyer System takes place; details of which are set out in the Order Form.</p>

“SME”	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Social Value”	the social, economic or environmental benefits set out in the Buyer’s Requirements;
“Software”	Specially Written Software, Supplier Software and Third Party Software;
“Software Supporting Materials”	has the meaning given in Clause 17.1(b) (<i>Specially Written Software and Project Specific IPRs</i>);
“Source Code”	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
“Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply;

“Staffing Information”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 30.1 (<i>Step-In Rights</i>);

“Step-In Event”	Trigger	<p>(a) any event falling within the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;</p> <p>(d) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 30 (Step-In Rights) is necessary;</p> <p>(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or</p> <p>(f) a need by the Buyer to take action to discharge a statutory duty;</p>
“Step-Out Date”		has the meaning given in Clause 30.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”		has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”		has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“Strategic Supplier”		means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”		any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”		<p>any third party with whom:</p> <p>(a) the Supplier enters into a Sub-contract; or</p>
		(b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;

“Sub-processor”	any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
“Subsidiary Performance Indicator”	the performance indicators set out in Paragraph 2 and/or Paragraph 4 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier”	means the entity identified as such in the Order Form;
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier COTS Background IPRs”	<p>any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier COTS Software”	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p>
	(b) has a Non-trivial Customer Base;

“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Buyer) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Background IPRs”	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Buyer and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 31.1 (<i>Buyer Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Representative”	the representative appointed by the Supplier (as may be changed from time to time in accordance with Clause 11.3, the details of which as at the Effective Date are set out in the Order Form
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Supplier Solution”	the Supplier's solution for the Services set out in Attachment 4.1 (<i>Supplier Solution</i>) of the Order Form including any Annexes of that Attachment;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

<p>“Supplier Termination Event”</p>	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Buyer incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.6(a) (<i>Financial and other Limits</i>); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Contract, including pursuant to: <ul style="list-style-type: none"> 1. Clause 19 (<i>IPRs Indemnity</i>); 2. Clause 39.6(b) (<i>Prevention of Fraud and Bribery</i>); and/or 3. Paragraph 6 of Schedule 7.4 (<i>Financial Distress</i>); 4. Paragraph 12 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning); (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (<i>Warranties</i>) being materially untrue or misleading; (h) the Supplier committing a material Default under Clause 10.10 (<i>Promoting Tax Compliance</i>) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (<i>Promoting Tax Compliance</i>) which in the reasonable opinion of the Buyer are acceptable; (i) the Supplier committing a material Default under any of the following Clauses: <ul style="list-style-type: none"> 1. Clause 5.5(j) (<i>Services</i>); 2. Clause 23 (<i>Protection of Personal Data</i>); 3. Clause 22 (<i>Transparency and Freedom of Information</i>); 4. Clause 21 (<i>Confidentiality</i>); and 5. Clause 35 (<i>Compliance</i>); and/or <p>in respect of any security requirements set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form, Schedule 2.4 (<i>Security Management</i>) or the Baseline Security Requirements; and/or</p>
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	<p>in respect of any requirements set out in Schedule 9.1 (<i>Staff Transfer</i>);</p> <p>(j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (<i>Benchmarking</i>);</p> <p>(k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;</p> <p>(l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Buyer with the Guarantor or with another guarantor which is acceptable to the Buyer);</p> <p>(m) a change of Control of the Supplier or a Guarantor unless:</p> <ol style="list-style-type: none"> 1. the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or 2. the Buyer has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Buyer was given notice of the Change of Control; <p>(n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Buyer that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Buyer pursuant to Clause 15.10 (<i>Appointment of Key Sub-contractors</i>);</p> <p>(o) any failure by the Supplier to enter into or to comply with an Admission Contract under the Annex to either Part A or Part B of Schedule 9.1 (<i>Staff Transfer</i>);</p> <p>(p) the Buyer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;</p> <p>(q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or</p> <p>(r) in relation to Schedule 2.4 (Security Requirements):</p> <ol style="list-style-type: none"> a. the Buyer has issued two rejection notices in respect of the Risk Management Document Set under Paragraph 4.5.2 (Part A) or Paragraph 6.8.2 (Part B), as the case may be;
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	<ul style="list-style-type: none"> b. the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register; c. Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Buyer has agreed in writing; d. the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or, e. the Supplier fails to comply with the Incident Management Process;
“Supply Chain Transparency Report”	means the report provided by the Supplier to the Buyer in the form set out in Annex 4 of Schedule 8.4 (Reports and Records Provisions);
“Target Performance Level”	the minimum level of performance for a Performance Indicator which is required by the Buyer, as set out against the relevant Performance Indicator in the tables in Paragraphs 1 – 4 (inclusive) of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;
“Termination Assistance Notice”	has the meaning given in Paragraph 5.1 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“Termination Notice”	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 (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit</i>

	<i>Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 6.2 (<i>Testing Procedure</i>) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Third Party Auditor”	an independent third party auditor as appointed by the Buyer from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (Reports and Records Provisions);
“Third Party Beneficiary”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	Third Party IPRs that: (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software (including open source software) that: (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;

“Third Party Provisions”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Transferring Assets”	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Buyer Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transparency Information”	has the meaning given in Clause 22.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“UK”	the United Kingdom;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);

“Unacceptable Failure” KPI	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected contract” Sub-	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected contractor” Sub-	any third party with whom the Supplier enters into an Unconnected Subcontract;
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives;

“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 8.4 (Reports and Records Provisions) and Part B of Attachment 8.4 (<i>Transparency Reports and Records to Upload to the Virtual Library</i>) of the Order Form; and
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.



HM Revenue
& Customs

Annex 2 – HMRC Mandatory Clauses

AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B. The Agreement incorporates the Authority's mandatory terms set out in this Annex 2.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Annex 2 will supersede any other terms in the Agreement.

1. Definitions

- "Affiliate"** 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 with, that body corporate from time to time;
- "Authority Data"** (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, and which are:
- (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
- "Charges"** the charges for the Services as specified in Schedule 6
- "Connected Company"** means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
- "Control"** the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
- "Controller", "Processor", "Data Subject",** take the meaning given in the UK GDPR;
- "Data Protection Legislation"** (a) The GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;
- (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy

“Key Subcontractor”

any Subcontractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Personal Data”

has the meaning given in the UK GDPR;

“Purchase Order Number”

the Authority’s unique number relating to the supply of the Services;

“Services”

the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;

“Subcontract”

any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Subcontractor”

any third party with whom:

- (a) the Supplier enters into a Subcontract; or
- (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;

“Supplier Personnel”

all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

“Supporting Documentation”

sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;

“Tax”

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax NonCompliance”

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax NonCompliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

“UK GDPR”

the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

“VAT”

value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in Schedule 6 of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

- 2.1.1** the Supplier does so at its own risk; and
- 2.1.2** the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system. **2.3** If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

3. Warranties

3.1 The Supplier represents and warrants that:

- 3.1.1** in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;

3.1.2 it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and

3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

3.3 In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

4.3 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.

4.4 If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:

4.4.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

4.4.2 promptly provide to the Authority:

(a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.

4.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

4.6 Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

4.7 If the Supplier:

4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;

4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or

Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or

- 4.7.3** fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

- 4.8** The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

- 5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at armslength and are entered into in the ordinary course of the transacting parties' business.
- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and off-shoring

- 6.1** The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1** not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a) the Supplier or any applicable Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the

Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;

- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier or any applicable 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 either the Authority or the Supplier when it is the Controller in meeting its obligations); and
- (d) the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

6.2 Failure by the Supplier or any applicable Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

- 7.1** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of

the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

- 7.3** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4** The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.5** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

Annex 1**Excerpt from HMRC's "Test for Tax Non-Compliance"***Condition one (An in-scope entity or person)*

1. There is a person or entity which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*¹;
 - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
 - a. Fraudulent evasion²;
 - b. Conduct caught by the General Anti-Abuse Rule³;
 - c. Conduct caught by the Halifax Abuse principle⁴;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
 - e. Conduct caught by a recognised 'anti-avoidance rule'⁵ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted AntiAvoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
 - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁶;
 - g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

1. In respect of (a), either X:

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others ⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

⁵ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁶ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemescurrently-in-the-spotlight>

- 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁷; or,
 - 2. Has been charged with an offence of fraudulent evasion.
2. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
3. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
4. In respect of (f) this condition is satisfied without any further steps being taken.
5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

Annex 2 Form

CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: [for Supplier to insert Contract reference number and contract date] ('the Agreement')

DECLARATION:

I solemnly declare that:

- 1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
- 2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED:
FULL NAME:
POSITION:
COMPANY:
DATE OF SIGNATURE:

OFFICIAL

⁷ The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.