

CONTRACT FOR THE PROVISION OF
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- (j) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 30 (*Remedial Adviser*);
- (k) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 31 (*Step-in Rights*);
- (l) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (m) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Goods and 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*).

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

15.11 The Supplier shall, within ten (10) Working Days of receiving a request from the Authority, provide a copy of the latest version of a Key Sub-contract to the Authority.

Supply chain protection

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

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving Goods and 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-Clause 15.12(b) above, the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.12(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) which are at least equivalent to those imposed on the Supplier in Clause 40

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(Prevention of Fraud and Bribery);

- (f) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (g) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.12 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.13 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 15.13(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.14 Without prejudice to Clause 15.13(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor 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 15.14(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.15 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay ninety-five percent (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 Authority Document Management System, Service Knowledge Management System and/ or the ITSM Dashboard (as applicable), within fifteen (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-Clause 15.15(a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

15.16 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 Authority Document Management System, Service Knowledge Management System and/ or the ITSM Dashboard (as applicable),.

15.17 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor 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.

- 15.18 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 Authority 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).
- 15.19 Notwithstanding any provision of Clauses 22 (*Confidentiality*) and 25 (*Publicity and Branding*), if the Supplier notifies the Authority (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 Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 15.20 Notwithstanding any provision of Clause 22 (*Confidentiality*), the Authority shall be entitled to
- (a) publish the details of the late or non-payment (including on government websites and in the press) by the Supplier; and/or
 - (b) take any of the following actions for such period of time as reasonably required by the Authority:
 - (i) retain such amount of the Charges which are equal to the undisputed amount payable by the Supplier to the Sub-contractor (the "**Retained Charges**") and pay the Retained Charges directly to the relevant Sub-contractor. For the avoidance of doubt, where the Authority has retained any Charges pursuant to this Clause 15.20(b)(i) (*Supply chain protection*), the Authority shall be deemed to have satisfied its obligation to pay those Charges to the Supplier;
 - (ii) require the Supplier to provide such financial information relating to the Supplier as the Authority may request; and/or
 - (iii) require the Supplier to establish suitable credit support arrangements acceptable to the Authority (which may include securing the Guarantee from a body acceptable to the Authority).

Termination of Sub-contracts

- 15.21 The Authority may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1(c) (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is
 - (iii) reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the provision of the Goods and Services or otherwise;
 - (iv) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

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- (v) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.29 (Exclusion of Sub-contractors); and
 - (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.
- 15.22 Subject to the following and Clauses 15.7 to 15.11 (inclusive) (*Appointment of Key Sub-contractors*), the Authority may require the Supplier to maintain a Sub-contract where the Supplier wishes to terminate a Sub-contract. Where the Supplier wishes to terminate a Sub-contract at any time, for any reason, it shall notify the Authority in writing ("**Sub-contract Termination Notice**") prior to serving notice to terminate the relevant Sub-contract. The Sub-contract Termination Notice shall contain (as a minimum) details of:
- (a) the Sub-contract to be terminated;
 - (b) reasons for such termination;
 - (c) the likely impact of the termination on the provision of the Services or any Goods; and
 - (d) any relevant provisions in the Sub-contract relating to deadlines for service of such termination notice.
- 15.23 Within 5 Working Days (or any applicable deadline date notified to it in the Sub-contract Termination Notice, if earlier) of receipt of a Sub-contract Termination Notice, the Authority shall notify the Supplier whether it accepts, rejects or requests clarification in relation to the Sub-contract Termination Notice. Where the Authority:
- (a) accepts the Sub-contract Termination Notice, the Supplier may terminate the relevant Sub-contract;
 - (b) rejects the Sub-contract Termination Notice (which it may only do if it reasonably considers that the termination would have a material, detrimental impact on the provision of the Services or any Goods), the Supplier shall not serve notice on the Sub-contractor to terminate the relevant Sub-contract; or
 - (c) requests clarification, the Supplier must provide appropriate assurance (determined by the Authority) that the proposed termination of the Sub-contract would not impact the provision of the Services or any Goods to the detriment of the Authority, or that any replacement Sub-contractor is suitable to ensure sufficient continuity in the provision of the Services or any Goods, before the Authority can accept the Sub-contract Termination Notice (in which case, Clause 15.7 (*Appointment of Key Sub-contractors*) will apply).
- 15.24 If the Authority does not respond to the Sub-contract Termination Notice within the period specified in Clause 15.23, or the applicable period in Clause 15.21(b)(ii) (*Termination of Sub-contracts*) (where notified to it), the Sub-contract Termination Notice will be deemed to have been accepted.

Competitive Terms

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

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.26 If the Authority exercises either of its options pursuant to Clause 15.25 (Competitive Terms), then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.27 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and 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

- 15.28 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 Goods or Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those Goods and/or elements of the Services.

Exclusion of Sub-contractors

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

Advertising Sub-contracting Opportunities

- 15.30 The Supplier shall:
 - (a) subject to Clauses 15.32 and 15.33 (*Advertising Sub-contracting Opportunities*), advertise on Findatender all Sub-contract opportunities arising from or in connection with the provision of the Goods or Services above a minimum threshold of one hundred thousand pounds (£100,000 GBP) that arise during the Term;
 - (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Findatender with details of the successful Sub-contractor;
 - (c) monitor the number, type and value of the Sub-contract opportunities placed on Findatender advertised and awarded in its supply chain during the Term;
 - (d) provide reports on the information at Clause 15.30(c) (*Advertising Sub-contracting Opportunities*), to the Authority in the format and frequency as reasonably specified by the Authority; and

- (e) promote Findatender to its suppliers and encourage those organisations to register on Findatender.
- 15.31 Each advert referred to at Clause 15.30(a) (*Advertising Sub-contracting Opportunities*) above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Findatender by the Supplier.
- 15.32 The obligation at Clause 15.30(a) (*Advertising Sub-contracting Opportunities*) shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.33 Notwithstanding Clause 15.30 (*Advertising Sub-contracting Opportunities*), the Authority may by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Findatender.

Management Charges and Information

- 15.34 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each Financial Year (unless another period has been identified by the Authority). The Supply Chain Transparency Report shall:
 - (a) contain all of the information described in the Supply Chain Transparency Information Template;
 - (b) be in the format set out in the Supply Chain Transparency Information Template in accordance with Annex 4 of Schedule 8.4 (*Reports and Records Provisions*); and
 - (c) be in accordance with any guidance issued by the Authority from time to time.
- 15.35 The Supplier shall use the latest version of the Supply Chain Transparency Information Template (which may be updated by the Authority from time to time) including the data required and/or format. The Authority shall give at least thirty (30) days' notice in writing to the Supplier of any such change and shall specify the date from which it must be used.

Support apprenticeships

- 15.36 The Supplier shall use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the Term.
- 15.37 The Supplier shall procure the provision of any appropriate further skills training opportunities for employees delivering the Agreement.

Procurement Policy Note 01/18

- 15.38 The Government wants to level the playing field and increase the visibility of supply chain opportunities to assist suppliers, including SMEs, in bidding for public contracts. Procurement Policy Note 01/18 requires the Authority to include in this Agreement a provision that requires a supplier to advertise subcontracting opportunities valued above a minimum threshold of £25,000. Due to the nature and value of this procurement, it has been envisaged by the Authority that there will be numerous Sub-contracting opportunities arising from this Agreement, which would be overly burdensome to the Supplier. The Authority, has therefore decided to increase the threshold described in Procurement Policy Note 01/18 to £100,000 (as per Clause 15.39 below) for this procurement to reduce the frequency of advertising every opportunity that arises from this Agreement. This would assist the Supplier to continue with its day-to-day activities without having to include procurement as part of its core activities.
- 15.39 The Supplier shall advertise on "Contracts Finder" and/or "Find a Tender Service" (or other procurement site identified by the Authority) any new Sub-contracting opportunities valued

above a minimum threshold of £100,000 that arise after contract award of this Agreement.

Authority Novated Third Party Contracts

- 15.40 The Authority shall novate the Third Party Contracts listed in Paragraph 2 of Schedule 4.4 (*Third Party Contracts*) in accordance with the timelines set out in the Implementation Plan.
- 15.41 The Supplier shall manage the Authority Novated Third Party Contracts in accordance with the provisions in Paragraph 18 of Part A of Schedule 2.1 (*Services Description*).
- 15.42 If requested by the Authority, the Supplier shall, on expiry of the Term or upon removal of the relevant Services, novate the relevant Authority Novated Third Party Contract(s) to the Authority and/or the Replacement Supplier (as appropriate) and the Authority shall pay the Supplier one pound GBP (£1) for each Authority Novated Third Party Contract(s) transferred to the Authority.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except as expressly set out in this Agreement:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data; and
 - (iii) the Authority Background IPRs;
 - (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
- 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 trade marks on any of its products or services without the other Party's prior written consent.
- 16.4 Unless the Authority otherwise agrees in advance in writing:
- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source software; and
 - (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as Open Source software, the Supplier shall also provide the converted format to the

Authority.

- 16.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause 20 (*Open Source Publication*).

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 17.1 Subject to Clause 17.15 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority 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 of the Supplier.

- 17.2 The Supplier:

- (a) shall:
 - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the 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 Authority; and
 - (iii) without prejudice to Clause 17.9 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 17.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

- 17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non- COTS Background IPR in the provision of the Goods and Services unless it is detailed in Schedule 5

(Software) or sent to the Technical Design Authority for review and approval granted by the Authority.

17.4 The Supplier hereby grants to the Authority:

- (a) subject to the provisions of Clause 17.15 (*Patents*) and Clause 35.12(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) during the Term and following termination or expiry of this Agreement:
 - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Goods or Services (or substantially equivalent goods or services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function ; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Goods or Services (or substantially equivalent goods or services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter 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 Authority shall remain entitled to sub-license, assign, or novate (including to any Replacement Supplier), as applicable the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.5 (*Authority's right to sub-licence*) and 17.6 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- (c) during the Term and following termination or expiry of this Agreement a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

Authority's right to sub-licence

17.5 Subject to Clause 17.15 (*Patents*) the Authority 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 Authority;
 - (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 Goods or Services (or substantially equivalent goods or services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier 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

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Specific IPRs provided that:

- (i) the sub-licence is on terms no broader than those granted to the Authority; and
- (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

- 17.6 The Authority 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 any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 17.7 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*).
- 17.8 If a licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.6 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.7, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 17.9 The Supplier shall not use in the provision of the Goods or 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 Schedule 5 (*Software*) or approval is granted by the Authority following a review by the Technical Design Authority and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.4(a) and Clause 17.6 (*Authority's right to assign/novate licences*); or
 - (b) complied with the provisions of Clause 17.10 (*Third Party Software and Third Party IPRs*).
- 17.10 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.9(a) (*Third Party Software and Third Party IPRs*), the Supplier shall:
- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 17.11 The Supplier shall:

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- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 17.10(a) (*Third Party Software and Third Party IPRs*), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

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

Termination and Replacement Suppliers

17.13 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

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

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

17.15 Where a patent owned by the Supplier or any Other Consortium Member is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants (or shall procure that the relevant Other Consortium Member shall grant within five (5) Working Days of the Supplier becoming aware of such infringement) to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

Escrow

17.16 The Supplier shall, and shall procure that each owner of the Deposited Software shall, not less than ten (10) Working Days following the relevant Go Live Date or such other periods as the Authority may require, deposit the Source Code of the Deposited Software in escrow either

with the National Computing Centre ("NCC") or its equivalent on the basis of their standard single licensee escrow agreement or with any other reputable escrow services provider, as required or agreed by the Authority, on the basis of terms broadly equivalent to NCC's standard single licensee escrow agreement.

- 17.17 The Supplier shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date with all, New Releases, Updates and Upgrades for the Deposited Software. For the purposes of this Clause 17.17 (*Escrow*), all references to "New Release", "Update" and "Upgrade" shall include Deposited Software.
- 17.18 The Supplier shall pay, or shall procure that each owner of Deposited Software pays, the initial storage fees and the annual fees under the escrow agreement and the Authority shall pay the release fees.
- 17.19 Where the Supplier is unable to procure compliance with the provisions of Clause 17.17 (*Escrow*) in respect of any Third Party Software or Embedded Software that is Deposited Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Supplier shall be excused from its obligations under Clause 17.17 (*Escrow*) only to the extent that the Parties have agreed on a suitable alternative.

Open source Software

- 17.20 The Supplier shall ensure that the Software does not contain any Open Source software other than such of the Software as is identified as such in Schedule 5 (*Software*). The Supplier warrants that the Open Source software is licensed upon terms which permit the use of such Open Source software by the Supplier, the Authority and each of the Service Recipients for all purposes contemplated by this Agreement.
- 17.21 The Supplier agrees that the Authority may at its sole discretion publish as Open Source software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Effective Date.
- 17.22 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
 - (b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
 - (d) do not contain any IPRs owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("Non-Party IPRs"); and
 - (e) will be supplied in a format suitable for publication as Open Source (the "**Open Source Publication Material**") no later than the Effective Date.
- 17.23 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the

Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

- 17.24 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 17.23 (*Open Source Software*).
- 17.25 The Supplier hereby indemnifies the Authority against all Losses incurred by the Authority for any breach by the Supplier of its Software Licence and Asset Management obligations under Paragraph 12.3 of Part A to Schedule 2.1 (*Services Description*).

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary in the provision of the Goods and Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (*Confidentiality*); and
 - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 (*Licences Granted by the Authority*) and any sub-licence granted by the Supplier in accordance with Clause 18.1 (*Licences Granted by the Authority*) shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 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 Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

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- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Goods and/or Services (as applicable).
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) (*IPRs Indemnity*) or to modify or replace an item pursuant to Clause 19.2(b) (*IPRs Indemnity*), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 19.1 (*IPRs Indemnity*), 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.

20 OPEN SOURCE PUBLICATION – NOT USED

21 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 21.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 21.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 21.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Paragraph 19.3 of Part A to Schedule 2.1 (*Services Description*).
- 21.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 21.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan and the requirements of Clause 24 (*Protection of Personal Data*) and Schedule 11 (*Processing of Personal Data*). The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 21.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements and any equivalent requirements relating to the security of Personal Data required by Schedule 11 (*Processing of Personal Data*).
- 21.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the

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restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or

- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 21.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason (including by way of a Data Loss Event), then the Supplier shall notify the Authority in accordance with Clause 24.7 (*Protection of Personal Data*) and inform the Authority of the remedial action the Supplier proposes to take.
- 21.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 21.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 21.11 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 Goods or Services it may submit a Contract 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.
- 21.12 Until and/or unless a Change to the Charges is agreed by the Authority pursuant to Clause 21.11 (*Authority Data and Security Requirements*) the Supplier shall continue to provide the Goods and perform the Services in accordance with its existing obligations.

22 CONFIDENTIALITY

- 22.1 For the purposes of this Clause 22, 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.
- 22.2 Except to the extent set out in this Clause 22 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
 - (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 22.3 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 23 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

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- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Goods and/or Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

22.4 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.

22.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Goods and Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 22.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

22.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement or in relation to public enquiries;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 22.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 31 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 30 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 22.

- 22.7 Nothing in this Clause 22 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23 TRANSPARENCY AND FREEDOM OF INFORMATION

- 23.1 The Parties acknowledge that the:

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

(together the “**Transparency Information**”) are not Confidential Information.

- 23.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 23.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).
- 23.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 23.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 23.6 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 Goods and Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 22.6(c) (*Confidentiality*)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 23.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

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

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

24 PROTECTION OF PERSONAL DATA

Status of the Controller

24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- (a) "Controller" (where the other Party acts as the "Processor");
- (b) "Processor" (where the other Party acts as the "Controller");
- (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
- (d) "Independent Controller" of the Personal Data where 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 Paragraph 1.4 to Schedule 11 (*Processing Personal Data*) which scenario (or scenarios) are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

24.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (*Processing Personal Data*) by the Controller and may not be determined by the Processor at any time.

24.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

24.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing, including as part of the Security Management Plan. Such assistance may, at the discretion of the Controller,

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include:

- (a) a systematic description of the processing operations envisaged by the Services, 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.

24.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement process that Personal Data only in accordance with (in the order of priority listed):

- (a) Schedule 11 (*Processing Personal Data*) and this Clause 24 (*Protection of Personal Data*), unless the Processor is required to do otherwise by Data Protection Legislation. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) the Controller's written instructions (to the extent compliant with Data Protection Legislation);
- (c) the Processor's updated privacy Policy (to the extent compliant with applicable Data Protection Legislation and not inconsistent with the Controller's written instructions).

24.6 The Processor shall:

- (a) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 21 (*Authority Data and Security Requirements*), which are appropriate to protect against a Data Loss Event (including the recurrence of any previous Data Loss Event) 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;
 - (iv) cost of implementing any measures;
 - (v) general obligations imposed on it as a Processor under Data Protection Legislation; and
 - (vi) any other related data processing standards, principles, measures or tools that are issued by the Authority or the ICO during the Term;
- (b) ensure that:
 - (i) its Service Continuity Plan (required to be implemented pursuant to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)) is appropriate, and specifically tailored, to protect against a Data Loss Event;
 - (ii) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*)); and

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- (iii) 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 22 (*Confidentiality*) and 21 (*Authority Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) only have access to the categories and types of Personal Data they need to perform their roles;
 - (D) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (E) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (c) not transfer (either directly or through its appointed Sub-processor) Personal Data outside of the UK (including by hosting the data from virtualisation Cloud servers hosted from non-UK based data centres), other than to the Controller 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 Parties have completed the Standard Contractual Clauses and only carry out such Personal Data transfers in connection with the provisions of the same;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) 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
 - (v) 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
- (d) at the written direction of the Controller, irretrievably delete or securely return Personal Data (and any copies of it) to the Controller within twenty (20) Working Days of termination of the Agreement in accordance with the requirements set out in Paragraph 6.4 to 6.5 and Paragraph 6 in Annex 1 to Schedule 2.4 (*Security Management*) (and provide written certification to the Controller of its compliance with these requirements) unless the Processor:
 - (i) is required by Data Protection Legislation or the provisions of this Agreement (including Schedules 8.4 (*Reports and Records Provisions*) 8.5 (*Exit Management*) and 11 (*Processing of Personal Data*)) to retain the Personal Data for an extended, fixed retention period; or
 - (ii) states in its privacy Policy that it ordinarily retains Personal Data for up to seven (7) years (or such other period as required by applicable Data Protection Legislation) following termination of any contract to which it is

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a party (which may include this Agreement).

- 24.7 Subject to Clause 24.8 (*Protection of Personal Data*), the Processor shall notify the Controller immediately if it receives, or becomes aware of:
- (a) a Data Subject Request (or purported Data Subject Request) by email to the following email address: data_protection@dhsc.gov.uk;
 - (b) a request to rectify, block or erase any Personal Data;
 - (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) any communication from the ICO or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Data Protection Legislation; or
 - (f) a Data Loss Event (whether or not the Processor is wholly or substantially responsible for the cause of the Data Loss Event).
- 24.8 The Processor's obligation to notify under Clause 24.7 (*Protection of Personal Data*) shall include the provision of further Information to the Controller in phases, as details become available, to ensure that the Controller remains suitably updated as to the Processor's compliance with the relevant complaint, communication or request.
- 24.9 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 24.7 (*Protection of Personal Data*) (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:
 - (i) to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation; or
 - (ii) where the outcome of the Data Protection Impact Assessment (referred to in Clause 24.4 (*Protection of Personal Data*)) requires the Controller to consult with the ICO;
 - (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 ICO, or any consultation by the Controller with the ICO.
- 24.10 As the contemplated data processing is not occasional and may include special category data, the Processor shall maintain complete and accurate Records and information to demonstrate its compliance with this Clause for the timeframes set out in Paragraph 3.4 of Schedule 8.4 (*Reports and Records Provisions*) and/or Schedule 11 (*Processing of Personal Data*).
- 24.11 In addition to (but to the extent not already covered by) any other related indemnity given by the Processor to the Controller elsewhere in this Agreement, the Processor shall indemnify the Controller from, and against, any and all Losses which the Controller suffers or incurs, arising out of, or in connection with, any breach by the Processor of any of its obligations imposed by this Clause 24 (*Protection of Personal Data*) or Schedule 11 (*Processing of Personal Data*).

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- 24.12 Not used.
- 24.13 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 24.14 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.15 Subject to Clause 24.16 (*Protection of Personal Data*) (to the extent applicable) before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) identify whether the Sub-processor is a Higher Risk Sub-contractor or Medium Risk Sub-contractor for the purposes of Schedule 2.4 (*Security Management*) and provide the Authority with any additional, applicable certifications required by Paragraphs 6.2 or 6.3 (as applicable) of that Schedule 2.4 (*Security Management*);
 - (c) obtain the written consent of the Controller either through completing and submitting a Contract Change Request, or such consent being deemed given by the Controller to those Sub-processor(s) listed in Paragraph 1.5 to Schedule 11 (*Processing Personal Data*) at the signature date;
 - (d) enter into a written agreement with the Sub-processor which:
 - (i) gives effect to the terms set out in this Clause 24 (*Protection of Personal Data*) such that they apply to the Sub-processor;
 - (ii) complies with the minimum requirements for processor to sub-processor contracts, stipulated by Article 28 of the GDPR; and
 - (iii) provides the Controller with such Information regarding the Sub-processor as the Controller may reasonably require (including such information required by Schedule 4.3 (*Notified Key Sub-contractors*)); and
 - (e) provide the Controller with such Information regarding the Sub-processor as the Controller may reasonably require.
- 24.16 Where the Controller is the Authority, the Authority's consent to the Sub-processor's appointment (as required by sub-Clause 24.15(c) (*Protection of Personal Data*) above) will already have been deemed to have been given where the Supplier's proposed Sub-processor is already an appointed Other Supplier. In this circumstance, the Supplier will only be required to notify the Authority (through the next applicable Working Group meeting) of the Personal Data to be transferred, and reasons for the transfer, before permitting the Sub-processor (in its capacity as an Other Supplier) to process the Personal Data (unless the Authority otherwise objects, for any reason).
- 24.17 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors including the relevant Sub-processor's compliance with the data retention obligations applicable to the Processor under this Agreement.
- 24.18 The Authority 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 Agreement).
- 24.19 The Parties agree to take account of any guidance issued by the ICO. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the ICO.

Where the Parties are Joint Controllers of Personal Data

24.20 The Parties agree that they shall not be Joint Controllers in respect of Personal Data under this Agreement at any time.

Where the Parties are Independent Controllers of Personal Data

24.21 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.

24.22 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.

24.23 Where a Party has provided Personal Data to the other Party in accordance with Clause 24.21 (*Protection of Personal Data*), 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.

24.24 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.

24.25 The Parties shall only provide Personal Data to each other:

- (a) to the extent necessary to perform the respective obligations under this Agreement;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
- (c) where it has recorded it in Schedule 11 (*Processing Personal Data*).

24.26 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.

24.27 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.

24.28 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**the Request Recipient**"):

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

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- 24.29 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal 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 ICO 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.
- 24.30 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Processing Personal Data*).
- 24.31 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Processing Personal Data*).
- 24.32 Notwithstanding the general application of Clauses 24.2 to 24.19 (*Protection of Personal Data*) 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 24.21 to 24.31 (*Protection of Personal Data*).

Standard Contractual Clauses

- 24.33 It is noted that the UK formally left the European Union on 31 January 2020 and the legal transition period under which it is treated by the European Union as a Member State for the purposes of European Union law ended on 31 December 2020. The extension granted by the European Union under which the UK is not treated as a third country for the purposes of the EU GDPR will end on 30 April 2021 unless further extended to end on 30 June 2021 (the "**EU Extension Period**"). If the EU Extension Period expires before the European Commission has adopted an adequacy decision for the UK under Article 45 of the EU GDPR and the Supplier is located within the EEA, Clauses 24.34, 24.35 and 24.36 (*Protection of Personal Data*) below shall apply.
- 24.34 If both Parties are Controllers of the Personal Data, the Parties agree:
- (a) that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2004/915/EC set out in Annex 2 to Schedule 11 (*Processing Personal Data*) in respect of data transfers by the Supplier outside of the EEA;
 - (b) that, where no other appropriate safeguard or exemption applies, that the Personal Data, subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
 - (c) to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
 - (d) that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
- 24.35 If the Supplier is a Controller of Personal Data and the Authority is a Processor, the Parties agree:

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- (a) that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2010/87/EU set out in Annex 3 to Schedule 11 (*Processing Personal Data*) in respect of data transfers by the Supplier outside of the EEA;
- (b) that, where no other appropriate safeguard or exemption applies, that the Personal Data Subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- (c) to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- (d) that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

24.36 If (i) the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time and (ii) the European Commission has not adopted an adequacy decision for the UK before the European Commission decision regarding such new Standard Contractual Clauses becomes effective, the Parties agree:

- (a) that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Annex 2 or 3 to Schedule 11 (*Processing Personal Data*) (as the context requires) and that such incorporation is not a Change;
- (b) that where no other appropriate safeguard or exemption applies, that the Personal Data, subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- (c) to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- (d) that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

25 PUBLICITY AND BRANDING

25.1 The Supplier shall not, and shall ensure that each Consortium Member does not:

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

without the prior written consent of the Authority.

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

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

26 LIMITATIONS ON LIABILITY