



Department  
for Work &  
Pensions

**DWP SERVICES CONTRACT**

**For**

**Records Management Services**

**Between**

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

**And**

**Supplier Name – Restore Plc Document Management Services Division  
Company Registration Number – 05169780**

**CONTRACT REFERENCE NUMBER: ecm\_9143**

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This Contract is made on the **28/05/2021**

**between the Parties**

The Secretary of State for Work and Pensions

("the Authority") acting as part of the Crown.

Of

Caxton House,  
Tothill Street  
London  
SW1H 9DA

And

Restore Plc Document Management Services Division

with Company Registration  
Number

05169780

having the main or  
registered office at

The Databank, Unit 5 Redhill Distribution Centre,  
Redhill, Surrey, RH1 5DY

("the Supplier")

individually referred to as "**Party**" and collectively as  
"**the Parties**"

## **INTRODUCTION**

- (A) On 18 December 2020 the Authority advertised in the Official Journal of the European Union (2020 – 615650), inviting prospective suppliers to submit proposals for the provision of a records management service to manage the Authority's hard copy records operating from the File Store.
- (B) The Supplier is a leading provider of Document Management and has experience in Records Management.
- (C) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (D) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

## **A.GENERAL PROVISIONS**

### **A1 Definitions and Interpretation**

A1.1 In this Contract the following provisions shall have the meanings given to them below: -

"**Access to Work**" means a grant, from DWP's Access to Work scheme, given to an employer to pay for practical support to help a Disabled Person start work, stay in work or move into self-employment.

**“Achieve”** means in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and **Achieved**, **Achieving** and **Achievement** shall be construed accordingly

**“Acquired Rights Directive”** means 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.

**“Activity Commencement Date”** means the [1<sup>st</sup> of June 2021, being the] date when the Supplier commences the supply of the Services (or any part of the Services,) under this Contract.

**“Administration”** means the administrative receivership of a company under the management of an administrator under the Insolvency Act 1986 (as amended).

**“Affected Party”** means the Party seeking to claim relief in respect of a Force Majeure Event

**“Affiliate”** means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in section 1159 of the Companies Act 2006.

**“Approval”** means the prior written consent of the Authority including consent provided by email by the Authority’s Representative.

**“Authority”** means the Department for Work and Pensions and “Contracting Authority” shall bear the same meaning.

**“Authority Assets”** mean any Authority Devices and Authority Data.

**“Authority Data”** means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, 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; or
- (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract.

Authority Data does not relate to any information held on any physical Item (as defined in the Specification) managed or held for the purpose of the Service within the File Store

**“Authority Device”** means any asset that provides an ICT function and is used by the Authority to conduct its business and operations.

**“Authority’s Premises”** means any premises owned, controlled or occupied by the Authority, including the File Store and which are made available for use by the Supplier or its Sub-contractor for the provision of the Services (or any of them).

**“Authority’s Representative”** means the representative(s) of the Authority authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract and shall be the person(s) named in paragraph 1.1 of Schedule 2.

**“Authority’s Security Requirements”** means the Authority’s security requirements set out in the Contract which include the requirements set out in Schedule 6 to the Contract.

**“Authority’s Systems Environment”** means all of the Authority’s ICT systems which are or may be used for the provision of the Services.

**“Breach of Security”** means the occurrence of:

- (i) any unauthorised access to or use of Authority Assets, the Authority’s Systems Environment (or any part thereof) and Supplier’s Systems Environment (or any part thereof);
- (ii) the loss and/or unauthorised disclosure of any Authority Assets, the Authority’s Systems Environment (or any part thereof) and Supplier’s Systems Environment (or any part thereof);
- (iii) any unauthorised event resulting in loss of availability of any Authority Assets, Authority’s Systems Environment (or any part thereof) and Supplier’s Systems Environment (or any part thereof);
- (iv) any unauthorised changes or modification to any Authority Assets, the Authority’s Systems Environment (or any part thereof) and Supplier’s Systems Environment (or any part thereof).

**“Bribery Act 2010”** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**“Business Continuity Plan”** means any plan prepared as directed in clause H5.6, as may be amended from time to time.

**“Change Authorisation Note”** means a note in the form attached at Appendix 3 of Schedule 11 (Change Control Procedure).

**“Change Communication”** means any Operational Change Request, Operational Change Confirmation, Change Request, Impact Assessment, Change Authorisation Note or other communication sent or which must be sent pursuant to the Change Control Procedure.

**“Change Control Procedure”** means the procedure for proposing a Contract Change, as set out in Schedule 11 (Change Control Procedure).

**“Change in Law”** means any change in law which impacts on the performance of the Services which comes into force from and including the Contract Commencement Date.

**“Change Request”** means a written request for a Contract Change which include the information as specified in the form of Appendix 1 of Schedule 11 (Change Control Procedure).

**“Commercially Sensitive Information”** means the Information: -

- (i) listed in Schedule 5 (Commercially Sensitive Information);
- (ii) notified to the Authority in writing (prior to the Contract Commencement Date) which has been clearly marked as Commercially Sensitive Information which is provided by the Supplier to the Authority in confidence; or
- (iii) which constitutes a trade secret

**“Commercially Sensitive Information Schedule”** means Schedule 5, containing a list of the Commercially Sensitive Information provided by the Supplier.

**“Comparable Supply”** means the supply of services to another customer of the Supplier that are the same or similar to any of the Services.

**“Confidential Information”** means: -

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential and the disclosure of which shall be carried out in accordance with clause E4; and
- b) the Commercially Sensitive Information and does not include any information: -
  - (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
  - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;



- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

**“Continuous Improvement Terms”** has the meaning described in Clause F7A.

**“Contract”** means this written agreement between the Authority and the Supplier consisting of these terms and conditions of contract and any attached Schedules, Appendices and any document referred to in the Schedules or Appendices.

**“Contract Change”** means any change to this Contract other than an Operational Change, including, for the avoidance of doubt, the Services, any restatement and any supplement to the Contract.

**“Contract Commencement Date”** means the date on which this Contract is signed/sealed.

**“Contract Period”** means the period from the Contract Commencement Date

- a) the date of expiry set out in clause A2 (Contract Period), or
- b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in Schedule [4] (Contract Price), for the full and proper performance by the Supplier of its obligations under the Contract.

**“Contract Price Schedule”** means Schedule 4 containing details of the Contract Price.

**“Contracting Body”** or **“Contracting Bodies”** means the Department for Work and Pensions and any contracting body described in the OJEU Notice 2020 - 615650.

**“Contracts Finder”** means the Government’s publishing portal for public sector procurement opportunities.

**“Critical Service Level Failure”** means the definition given to it in Schedule 3 (Monitoring Requirements) –Appendix B

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies. In this Contract, the Authority is acting as part of the Crown.

**“Data Controller”** shall have the same meaning as given in Data Protection Legislation.

**“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 alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**“Data Processor”** shall have the same meaning as given in the Data Protection Legislation.

**“Data Protection Impact Assessment”** means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA, the Criminal Law Enforcement Data Protection Directive 2016/680, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iii) all applicable Law relating to the processing of Personal Data and privacy.

**“Data Protection Officer”** shall have the same meaning as given in Data Protection Legislation.

**“Data Subject”** shall have the same meaning as given in Data Protection Legislation.

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or personnel including directors, officers, employees, sub-contractors, servants, agents and consultants in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“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;

**“Directive”** means EC Council Directive 2001/23/EC.

**“DPA”** means the Data Protection Act 2018.

**“Eligible Employee”** means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement.

**“Employee Liabilities”** means 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:

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(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;

(d) compensation for less favourable treatment of part-time workers or fixed term employees;

(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

(f) employment claims whether in tort, contract or statute or otherwise;

(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.

**“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (**TUPE**) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Equipment”** means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

**“Exit Management”** means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 14 Exit Management.

**“File Store”** means the Authority’s Premises from where the Services are to be supplied, as set out in the Specification being the Records storage facility which is located in Manchester Road, Heywood, Lancashire OL10 2PZ and any references to **“Heywood File Store”** shall bear the same meaning.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or

codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement 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 Sub-contractor’s supply chain.

**“Force Majeure Notice”** 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

**“Fraud”** means any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Contract, defrauding or attempting to defraud or conspiring to defraud the Crown.

**“General Change in Law”** means 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 Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“GDPR”** means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**“Guarantee”** means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Schedule 10 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

**“Guarantor”** means the body which has agreed to guarantee the due performance of the Contract by the Supplier as defined in clause G4 and the deed at Schedule 10 (Parent Company Guarantee).

**“ICT”** means information and communications technology.

**“Impact Assessment”** means an assessment of a Change Request in accordance with paragraph 5 of Schedule 11 (Change Control Procedure).

**“Implementation Period”** means the period which starts at the Contract Commencement Date and expires at midnight at the end of the day before the Activity Commencement Date

**“Implementation Plan”** means the plan set out in Schedule 1 Part B (The Services, Implementation Plan and Key Personnel)

**“Information”** has the meaning given under section 84 of the FOIA.

**“Intellectual Property Rights”** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“International Organisation”** shall have the same meaning as given in Data Protection Legislation.

**“Invitation to Tender”** means the invitation and instructions to tenderers issued by the Authority on 18/12/2020.

**“Key Personnel”** means those persons described in clause B4 and listed at Schedule 1 - Part C.

**“Key Performance Indicator” or “KPI”** means a key performance indicator to which the Services are to be provided as set out in the Specification.

**“Key Roles” means** roles described in Schedule 1 - Part C and any additional roles added from time to time as identified by the Contracting Authority.

**“Landed Resources”** means when the Supplier or its Sub-contractor causes foreign nationals to be brought to the United Kingdom to provide the Services.

**“Law”** means any applicable law, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, enforceable European Union right including enforceable rights 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, regulation, directive, order, mandatory guidance, code of practice and/or requirements or any Regulatory Body of which the Supplier is bound to comply.

**“LED”** Law Enforcement Directive (*Directive (EU) 2016/680*).

**“Liquidation”** means the appointment of a Liquidator who collects in and distributes the company's assets and dissolves the company. The company can also be put into provisional Liquidation before a final winding up order is granted.

**“Loss”** means direct loss, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such loss is reasonable, direct, proper and mitigated.

**“Malicious Software”** means 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.

**“Material Breach”** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from: -

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in clauses A8.3, B3.9, B5.9, D8, E1.11, E3, E4.4, F5, H2, Schedule 3 (Monitoring Requirements) over any two (2) month period during the term of the Contract;
- c) any Default which is specified in the Contract as a ‘Material Breach’ or which may be deemed to be a Material Breach.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**“Milestone”** means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

**“Milestone Date”** means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.

**“Monitoring Requirements Schedule”** means the details of the monitoring arrangements, more particularly described in [these terms and conditions of Contract and Schedule 3 (Monitoring Requirements).

**“Month”** means calendar month.

**“New Fair Deal”** means the revised Fair Deal position set out in HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date.

**“OJEU Notice”** means the contract notice published in the Official Journal of the European Union under reference 615650.

**“Operational Change”** means any change in the Supplier's operational procedures which in all respects, when implemented: -

- (i) will not affect the Contract Price and will not result in any other costs to the Authority;

- (ii) 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;
- (iii) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's Systems Environment; and
- (iv) will not require a change to this Contract.

**"Operational Change Confirmation"** means a written response to an Operational Change Request in which the Party that receives the Operational Change Request confirms its agreement to it. The confirmation may be sent by electronic mail or letter.

**"Operational Change Request"** means a written request for an Operational Change which may be sent by electronic mail or by letter.

**"Parent Company"** is a company that owns enough voting stock in another firm known as its subsidiaries to control management and operation by influencing or electing its board of directors.

**"Parent Company Guarantee"** means the parent company guarantee in the form set out in Schedule 10 (Parent Company Guarantee).

**"Party"** means a party to the Contract.

**"Performance Improvement Plan"** means the plan to be provided by the Supplier in accordance with clauses F5.2.2 and F5.2.4(i).

**"Persistent Breach"** means a Default which has occurred on three (3) or more separate occasions within a continuous period of three (3) months.

**"Personal Data"** shall have the same meaning as given in Data Protection Legislation and shall include Special Categories of Personal Data.

**"Personal Data Breach"** shall have the same meaning as given in Data Protection Legislation.

**"Pre-Existing Intellectual Property Rights"** means any Intellectual Property Rights vested in or licensed to the Authority or the Supplier prior to or independently of the performance by the Authority or the Supplier of their obligations under this Contract and in respect of the Authority includes Authority Data.

**"Prohibited Act"** shall have the meaning given in clause D1.

**"Property"** means the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Contract.

**“Protective Measures”** means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):

- (i) Pseudonymisation and encrypting Personal Data;
- (ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (iii) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident
- (iv) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (v) regularly assessing and evaluating the effectiveness of such measures adopted by it.

**“Pseudonymisation”** shall have the same meaning as given in Data Protection Legislation.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**“Receiving Party”** means the Party which receives a proposed Contract Change.

**“Records Management System (RM System)”** means the IT system utilised by the Supplier to fulfil the requirements specified for this Contract, further described in the Specification.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

**“Relevant Transfer”** means a transfer of employment to which the Employment Regulations apply.

**Relevant Transfer Date** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

**“Replacement Supplier”** means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract (or where the Authority is providing replacement services for its own account, the Authority)



**“Replacement Sub-contractor”** means a sub-contractor of the Replacement Supplier to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor).

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Schedule”** means a Schedule attached to, and forming part of, the Contract.

**“Schemes”** means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme; and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

**“Security Policies”** mean the Authority’s Security Policies published by the Authority from time to time and shall include any successor, replacement or additional Security Policies. The Security Policies are set out in Annex A to Schedule 6.

**“Security Policies and Standards”** mean the Security Policies and the Security Standards.

**“Security Standards”** mean the Authority’s Security Standards published by the Authority from time to time and shall include any successor, replacement or additional Security Standards. The Security Standards are set out in Annex B to Schedule 6.

**“Service(s)”** means the services to be provided by the Supplier to the Contracting Authority, more particularly described in the Specification in Schedule 1.

**“Service Credit Cap”** means:

- a) in the period of 12 months from the Activity Commencement Date, 1% of the Contract Price; and
- b) during the remainder of the Term, 1 % of the Contract Price 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.

**“Service Credits”** means the sums attributable to a Service Level Failure below the Service Level Threshold as specified in Schedule 4 Contract Price.

**“Service Failure”** means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provisions of the Services or event which could affect the provision of the Services in the future.

**“Service Level Failure”** means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion as set out in Schedule 4 Contract Price.

**“Service Level Performance Criterion”** means the service levels to which the Services are to be provided, as set out in the Specification be as set out in Schedule 3 – Monitoring Requirements.

**“Service Level Performance Measure”** shall be as set out in Schedule 3 Monitoring Requirements.

**“Service Level Threshold”** shall be set out as against the relevant Service Level Performance Measure in Schedule 3 Monitoring Requirements.

**“Service Period”** means a calendar month

**“SME”** means 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.

**“Sites”** means any premises (including the Files Store, Contracting Authority Premises or the Supplier’s premises to or at which, Services are to be provided or the Supplier manages, organises or otherwise directs the provision or the use of the Services;

**“Special Categories of Personal Data”** shall have the meaning given in Data Protection Legislation.

**“Specification”** means the description of the Services to be provided as specified in the Specification at Schedule 1 The Services.

**“Specific Change in Law”** means a Change in Law that relates specifically to the business of the Authority that would not affect a Comparable Supply.

**“Supplier Personnel Vetting Procedures”** means the Authority’s procedures for the vetting of personnel and as advised to the Supplier by the Authority.

**“Start Date”** shall have the meaning described in the Supplier Guidance.

**“Sub-contract”** means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain between the Supplier and the Sub-Supplier, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract).

**“Sub-contractor”** means any third party appointed by the Supplier which through its employees or agents directly delivers the Services.

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Supplier under this Contract.

**“Supplier”** means the person, partnership or company with which the Authority enters into the Contract.

**“Supplier Guidance”** means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Supplier prior to the Contract Commencement Date, and any other instructions and recommended practices notified by the Authority to the Supplier from time to time.

**“Supplier Personnel”** means all persons employed by the Supplier to perform its obligations under the Contract including 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’s Systems Environment”** means any ICT systems provided by the Supplier (and any Sub-contractor) which are or may be used for the provision of the Services.

**“Sustainable Development”** means the sustainable development requirements specified in Schedule 7.

**“Tender”** means the document(s) submitted by the Supplier to the Authority in response to the Invitation to Tender.

**“Transferring Equipment”** means the equipment held at the File Store as better described and listed in Schedule 16.

**“Transferring Authority Employees”** means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Former Supplier Employees”** means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**“Transferring Supplier Employees”** means those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**“Working Day”** means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions: -

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- c) Reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted;
- d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- f) The words “integrity”, “availability”, “related properties of information” and “threat landscape” shall have the meaning ascribed to them in accordance with Good Security Practice (as defined in Schedule 6).

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **A2 Contract Period**

This Contract shall commence on the Contract Commencement Date first of April 2021 (01/04/2021) and shall expire automatically on tenth of January 2023 (10/01/2023), unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated.

## **A3 Supplier's Status**

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms and conditions of this Contract.

## **A4 Authority's Obligations**

Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability, under this Contract (howsoever arising), on the part of the Authority to the Supplier.

## **A5 Notices**

A5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail or by letter (such letter may be delivered by hand or sent by registered post or by recorded delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or 09.00 am on the first Working Day after sending, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause A5.3.

A5.3 For the purposes of clause A5.2, the address of each Party shall be: -

a) For the Authority:

Address: Commercial Directorate, Peel Park: The Shell,  
Level 2, Brunel Way,  
Blackpool,  
FY4 5ES

For the attention of: [REDACTED]

Email: [REDACTED]

b) For the Supplier:

Address: Restore Records Management, The Databank, Unit 5 Redhill  
Distribution Centre, Salbrook Road, Redhill, Surrey, RH1 5DY

For the attention of: [REDACTED]

Email: [REDACTED]

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **A6 Mistakes in Information**

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

## **A7 Conflicts of Interest**

A7.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Personnel is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

A7.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A7.3 This clause A7 shall apply for the duration of this Contract and for a period of two (2) years after its termination.

## **A8 Prevention of Fraud**

A8.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Contract. Suppliers and its Sub-contractors are required to: -

- a) have an established system that enables the Supplier and its Supplier Personnel to report inappropriate behaviour by colleagues in respect of Contract performance claims;
- b) ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of Contract performance targets;
- c) ensure a segregation of duties within the Supplier's and/or Sub-contractor's operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority;
- d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.

A8.2 The Supplier shall use its best endeavours to safeguard the Authority's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Supplier Personnel, including its directors. The Supplier shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or Fraud has occurred or is occurring.

A8.3 If the Supplier and/or its staff commit Fraud including deliberately submitting false claims for Contract payments with the knowledge of its senior officers in relation to this or any other contract with the Crown (including the Authority or any other Contracting Body) the Authority may: -

- a) terminate the Contract and/or any other contract the Authority has with the Supplier by serving written notice on the Supplier and recover from the Supplier the amount of any loss suffered by the Authority resulting from the

termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

- b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any Default of this clause.

For the avoidance of doubt any breach referred to in clause A8.3 shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

## **A9 Exclusion of Sub-contractors**

A9.1 Where the Authority considers under Regulation 71(8) of the Public Contracts Regulations 2015 whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then: -

- a) If the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- b) If the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

A9.2 The Supplier shall include in every Sub-contract: -

- a) a right for the Supplier to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in connection with environmental, social or labour law matters; and
- b) a requirement that the Sub-contractor includes a provision having the same effect as clause A9.2 (a) in any Sub-contract which it awards.

## **B.SUPPLY OF SERVICES**

### **BA1 Implementation Plan**

BA1.1 The Supplier shall comply with the Implementation Plan set out at Part 2 of Schedule 1 (The Services).

BA1.2 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

BA1.3 Where so specified by the Contracting Authority in the Implementation Plan or elsewhere in this Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence.

**B1 The Services**

- B1.1 The Supplier shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in this Contract, including the Specification (which forms part of the Contract) and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Supplier supplies the Services at the File Store during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements and this is other than as a result of a Default by the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

**B2 Provision and Removal of Equipment**

- B2.1 The Supplier shall provide all the Equipment necessary for the supply of the Services (which shall include the RM System and equipment associated with provision of the RM System).
- B2.2 The Supplier shall not deliver any Equipment nor begin any work on the File Store without obtaining prior Approval.
- B2.3 All Equipment brought onto the File Store shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage to the File Store and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the File Store will remain the property of the Supplier.
- B2.4 The Supplier shall maintain all items of Equipment within the File Store in a safe, serviceable and clean condition.
- B2.5 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable: -
- a) remove from the File Store any Equipment which in the reasonable opinion of the Authority is hazardous, noxious or not in accordance with the Contract; and
  - b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the File Store in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the File Store or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any of its Supplier Personnel.



### **B3 Manner of Carrying Out the Services**

B3.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and the standards specified in this Contract.

B3.1A The Supplier shall ensure that:

- a) the Services comply in all respects with the description of the Specification in Schedule 1;
- b) the Services are supplied in accordance with the provisions of this Contract and the Tender; and
- c) it performs its obligations under the Contract:
  - (i) in accordance with the Law;
  - (ii) Good Industry Practice;
  - (iii) The Authority's Security Requirements; and
  - (iv) The Authority's Systems Environment.

B3.2 The Supplier shall ensure that all Supplier Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.2A The Supplier shall at all times:

- a) allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract; and
- b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to F3 (Contract Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services.

B3.3 The Authority will conduct a review of the performance of this Contract at least annually during the Contract Period. During this review, a performance report will be agreed.

B3.4 Not Used

B3.5 The Supplier shall comply with the provisions of Appendix A (Contract Performance, Target, Service Levels) of Schedule 3 (Monitoring Requirements). In doing so, the Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Level Performance Level for each Service Level Performance Criterion

B3.5A The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Contracting Authority and

that it shall entitle the Contracting Authority to the rights set out in Schedule 4 - Service Credits including the right to any Service Credits.

B3.6 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority or a price reduction in order to appropriately reflect the diminution in the service provided by the Supplier, or has otherwise been agreed by the Parties as reasonable and proportionate in order to protect the Authority's legitimate commercial interests. The Supplier has taken the Service Credit into account in setting the level of the Contract Price.

B3.7 Service Credits shall be the Contracting Authority's exclusive financial remedy for a Service Level Failure except where:

- (a) the Supplier has over the previous 12-month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the Service Level Failure:
  - (i) breaches the relevant Service Level 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 Authority Data (in which case the remedies under E1.11 (shall also be available); and/or
    - (B) the Authority 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 Contracting Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause H3 (*Termination by the Authority*).

B3.8 Not more than once in each Contract Year the Contracting Authority may, on giving the Supplier at least 3 months' notice change the weighting of the Service Level Performance Measure that applies in respect of one or more Service Level Performance Criteria provided that:

- (a) the total number of Service Level Performance Criteria does not exceed twenty (20);
- (b) The principle purpose of the change is to reflect the changes in the Contracting Authority's business requirements and/or priorities to reflect changing industry standards; and
- (c) There is no change to the Service Credit Cap.

### B3.9 Critical Service Level Failure

If a Critical Service Level Failure occurs:

- (a) Any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- (b) The Contracting Authority shall (subject to the Service Credit Cap set out in G1.4A (Liability, Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Contract Price which would otherwise have been due to the Supplier in respect of that Service Period (Compensation for Critical Service Level Failure), provided that the interpretation of this clause B3.9 shall be without prejudice to the right of the Contracting Authority to terminate this Contract and / or to claim damages from the Supplier for Material Breach as a result of such Critical Service Level Failure.

### BA3.9 The Supplier:

- (a) Agrees that the application of clause B3.9 is commercially justifiable where a Critical Service Level Failure occurs; and
- (b) Acknowledges that it has taken legal advice on the application of clause B3.9 and has had the opportunity to price for that risk when calculating the contract charges.

## **B4 Key Personnel**

B4.1 The Parties have agreed to the appointment of Key Personnel. The Supplier acknowledges that the Key Personnel are those personnel of the Supplier that fulfil the Key Roles and that are essential to the proper provision of the Services to the Authority. Schedule 1 Part C Lists the Key Personnel and their Key Roles at the Contract Commencement Date.

B4A.1 The Authority may identify 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.

B4.2 The Key Personnel shall not be released from supplying the Services (including when carrying out Exit Management) without prior Approval unless:

- (a) requested to do so by the Authority;
- (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 Sub-contractor is terminated for material breach of contract by the employee; or

- (d) the Supplier obtains the Contracting Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

B4A.2 In relation to the Key Personnel; the Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term 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; and
- (c) 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 provision of the Services.

B4.3 Any replacements to the Key Personnel shall be subject to prior Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B4.5 The Contracting Authority may require the Supplier to remove any Key Personnel that the Contracting Authority considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of replacing any Key Personnel.

## **B5 Supplier Personnel**

B5.1 The Authority may, by written notice to the Supplier, refuse to admit on to, or withdraw permission for the Supplier Personnel to remain on, the File Store where the admission or continued presence of: -

- a) any member of the Supplier Personnel; or
- b) any person employed or engaged by any member of the Supplier Personnel,

would, in the reasonable opinion of the Authority, be undesirable.

B5.2 At the Authority's written request, the Supplier shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the File Store, within seven (7) Working Days from the date of

request and in advance of admission to the File Store, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- B5.3 The decision of the Authority as to whether any person is to be refused access to the File Store and as to whether the Supplier has failed to comply with clause B5.2 shall be final and conclusive.
- B5.4 The Supplier Personnel, working from the File Store, shall comply with such rules, regulations and requirements (including those relating to security arrangements) including Schedule 6 (Security Requirements Level 1 and 2) and Schedule 7 (Information about the Authority's Premises) of this Contract as may be in force from time to time for the conduct of personnel when at or outside the File Store.
- B5.5 Not Used
- B5.6 The Supplier shall comply with Supplier Personnel Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier shall have complied with the Supplier Personnel Vetting Procedures prior to commencing the Services and accessing the Premises.
- B5.7 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policies and Standards.
- B5.8 The Supplier shall further use all reasonable endeavours to ensure that Supplier Personnel who are not EU nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. The Supplier shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.9 If the Supplier, in the reasonable opinion of the Authority, fails to comply with clauses B5.4, and B5.6 the Authority will be entitled to consider that failure a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.2A.

## **B6 Inspection of Premises**

- B6.1 Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the File Store before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract.

## **B7 Licence to Occupy Premises**

- B7.1 Any land or File Store made available from time to time to the Supplier by the Authority in connection with this Contract shall be made available to the Supplier on a revocable, non-exclusive, licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such land or File Store as licensee and shall vacate the same on completion, termination or abandonment of the Contract in accordance with Schedule 14 (Exit Management).

- B7.2 The Supplier shall limit access to the land or File Store to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that Supplier Personnel co-operate) with such other persons working concurrently on such land or File Store as the Authority may reasonably request.
- B7.3 The Supplier shall (and shall ensure that Supplier Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such File Store as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.4 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use the File Store owned or occupied by it in any manner it sees fit.
- B7.5 Should the Supplier require modifications to the File Store, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

## **B8 Property**

- B8.1 Where the Authority provides Property free of charge to the Supplier such Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any Premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times have access to or custody of the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise in writing within five (5) Working Days of receipt.
- B8.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Supplier shall ensure that all the Property whilst in its custody, either on the File Store or elsewhere during the supply of the Services, is secured in accordance with the Authority's Security Requirements.

B8.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Supplier shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or loss or damage occurring to, the Property.

#### **B8A Transfer of Equipment within the File Store**

B8A.1 The Contracting Authority, as beneficial owner, shall sell, and the Supplier shall agree to purchase and accept the Transferring Equipment as listed in Schedule 16 (Transferring Equipment) at the Activity Commencement Date. The Contracting Authority reserves the sole right to remove and/or add equipment to the list which is set out in Schedule 16.

B8A.2 To the extent which the Contracting Authority is legally permitted to do so, the Contracting Authority hereby assigns all the Contracting Authority's rights against manufacturers, suppliers and third parties in respect of the Transferring Equipment to the Supplier. The Contracting Authority shall, at the Supplier's request and expense, give to the Supplier reasonable assistance to enable the Supplier to enforce such rights.

B8A.3 In consideration of the Supplier agreeing to accept the title to, and risk in accepting the Transferring Equipment on the Activity Commencement Date, the Supplier hereby agrees to pay the Contracting Authority the sum of one pound sterling (£1) (receipt of which is hereby acknowledged by the Contracting Authority).

#### **B9 Offers of Employment**

B9.1 For the duration of the Contract and for a period of twelve (12) months thereafter neither the Authority nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

#### **B10 Employment Indemnity**

B10.1 The Parties agree that:

- (a) the Supplier shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- (b) the Authority shall both during and after the Contract Period indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

## **B11 Income Tax and National Insurance Contributions**

B11.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

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

## **B12 Staff Transfer**

B12.1 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 13 (*Staff Transfer*) shall apply as follows:
  - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 13 (*Staff Transfer*) shall apply;
  - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 13 (*Staff Transfer*) shall apply;
  - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 13 (*Staff Transfer*) shall apply; and
  - (iv) Part C of Schedule 13 (*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 13 (*Staff Transfer*) shall apply, Part D of Schedule 3 may apply and Parts A and B of Schedule 13 (*Staff Transfer*) shall not apply; and

Part E of Schedule 13 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

## **B13 Third Party Rights in relation to TUPE and Pensions**

B13.1 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 13 (*Staff Transfer*) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).



- B13.2 Subject to Clause **Error! Reference source not found.**, 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.
- B13.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine
- B13.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause **Error! Reference source not found.** may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## **C.PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

- C1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Authority shall pay undisputed sums of the Contract Price in accordance with clause C2 (Payment and VAT) and Schedule 2 (Administration Requirements).

### **C2 Payment and VAT**

- C2.1 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- C2.2 Where the Supplier submits an invoice to the Authority in accordance with clause C2.5, the Authority will consider and verify that invoice in a timely fashion.
- C2.3 The Authority shall pay the Contract Price due to the Supplier under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- C2.4 Where the Authority fails to comply with clause C2.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C2.3 after a reasonable period of time has passed.
- C2.5 The Supplier shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 2 (Administration Requirements).
- C2.6 Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Contract, the Supplier shall include in that Sub-contract: -
- a) provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract; and

- b) a provision requiring the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract.
- C2.7 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Supplier following an undisputed claim for payment being notified by the Supplier in accordance with the provisions of Schedule 2 (Administration Requirements).
- C2.8 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which 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 VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause C2.8 shall be paid 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.
- C2.9 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under clause H2.5 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- C2.10 Where payment by the Authority of all or any part of any payment submitted or other claim for payment by the Supplier is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Schedule 2 (Administration Requirements).
- C2.11 Without prejudice to clause C2.8, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Supplier to: -
- a) assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and
  - b) account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Contract to HM Revenue & Customs ("HMRC").
- C2.12 The Authority shall not be liable to the Supplier in any way whatsoever for any error or failure made by the Supplier (or the Authority) in relation to VAT, including without limit: -
- a) where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
  - b) where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or

- c) where the Supplier's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
- d) where the Supplier has specified a rate of VAT, or a VAT classification, to the Authority (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Supplier subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this clause C2.12 (d), the Supplier shall be obliged to repay any overpayment by the Authority on demand.

C2.13 Where the Supplier does not include VAT on an invoice, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

C2.14 The Supplier acknowledges that the Authority has advised the Supplier that the Supplier should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Supplier should seek clarification of the Contract's VAT status with HMRC.

### **C3 Recovery of Sums Due**

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **C4 Price Adjustment on extension of Initial Contract Period - Not Used**

### **C5 Euro**

C5.1 Any requirement of Law to account for the Services in Euro or any other currency (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier at nil charge to the Authority.

C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Supplier.

## **C6 Third Party Revenue**

C6.1 The Supplier may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

## **D.STATUTORY OBLIGATIONS AND REGULATIONS**

### **D1 Prevention of Bribery and Corruption**

D1.1 The Supplier shall not, and shall ensure that any staff shall not, commit any of the prohibited acts listed in this clause D1 ("**Prohibited Act**"). For the purposes of this clause D1, a Prohibited Act is committed when the Supplier or any staff: -

- a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to: -
  - (i) induce that person to perform a relevant function or activity improperly; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- c) commits any offence: -
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
  - (iv) relating to defrauding, attempting to defraud or conspiring to defraud the Authority.

D1.2 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract.

D1.3 The Supplier shall if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

D1.4 The Supplier shall have an anti-bribery policy which it implements actively to prevent any staff from committing any Prohibited Acts as set out in clause D1.1 and a copy of this shall be provided to the Authority upon request.

D1.5 The Supplier shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any of its staff has: -

- a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act in clauses D1.1 or D1.2;
- 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; 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 in clauses D1.1 or D1.2.

Any Default by the Supplier in connection with this clause D1.5 shall entitle the Authority to exercise its rights under clause F5.

D1.6 If the Supplier notifies the Authority that it suspects or knows that there may be a Default of clause D1.1 or D1.2, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

D1.7 If the Supplier, its staff or anyone acting on the Supplier's behalf engages in conduct prohibited by clause D1.1 or D1.2, the Authority may: -

- a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and
- b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any Default of those clauses.

D1.8 Notwithstanding clause I (Disputes and Law), any dispute relating to: -

- a) the interpretation of clause D1; or
- b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.

D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority under the Contract or otherwise.

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by clauses D1.1 or D1.2 and the identity of the person performing that Prohibited Act.

## **D2 Discrimination**

D2.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Supplier shall take all reasonable steps to secure the observance of clause D2.1 by all staff.

D2.3 The Supplier shall comply with the provisions of the Human Rights Act 1998.

## **D3 The Contracts (Rights of Third Parties) Act 1999**

D3.1 Subject to Clause B13.1, a person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties except as specified in this Contract. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## **D4 Environmental Requirements NOT USED**

## **D5 Health and Safety**

D5.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

D5.2 The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the File Store and which may affect the Supplier in the performance of its obligations under the Contract.

D5.3 While on the File Store, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working there, including the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the File Store.

D5.4 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the File Store

where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.5 The Supplier shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the File Store in the performance of its obligations under the Contract.

D5.6 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

**D6 Requirements for Timber NOT USED**

**D7 Tax NOT USED**

**D8 Termination Rights due to Occasion of Tax Non-Compliance NOT USED**

**D9 Accessible Digital Standards**

D9.1 The Supplier shall comply with, or, within an agreed period, work towards compliance of (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) EN301549 v.2.1.2 (2018-08) Accessibility requirements for ICT products and services

as such standards are revised and updated from time to time.

**E.PROTECTION OF INFORMATION**

**E1 Authority Data**

E1.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 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 Contract or as otherwise expressly authorised in writing by the Authority.

E1.3 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. Acceptable timescales and formats to be agreed by both parties.

E1.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of that data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor. Supplier shall not be liable for, but endeavours to mitigate the effects of, any corruption or

loss of Authority Data arising from a Default by any of Authority's third party contractors providing supporting services under this Contract.

- E1.5 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 Business Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request and confirmation that secure back-ups have been performed in accordance with the Authority's requirements as specified in this clause E1.5 are delivered to the Authority no less than every three (3) Months.
- E1.6 The Supplier shall ensure that any system or media on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policies and Standards detailed in Schedule 6.
- E1.7 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 to the extent permissible, as agreed (at the Supplier's expense) to restore or provide for the restoration of the Authority Data and the Supplier shall do so as soon as practicable but not later than twenty (20) Working Days;
  - b) itself restore or provide for the restoration of the Authority Data and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- E1.8 If at any time the Supplier suspects or has reason to believe that the Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- E1.9 The Supplier and any of its Sub-contractors, shall not access, process, host or transfer Authority Data outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Supplier shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question. The provisions set out in this paragraph E1.9 shall apply to Landed Resources.
- E1.10 Where the Authority has given its prior written consent to the Supplier to access, process, host or transfer Authority Data from premises outside the United Kingdom (in accordance with clause E1.9 of the Contract): -
- a) the Supplier must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data; and
  - b) the Supplier shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.



E1.11 Any breach by the Supplier of this clause E1 shall be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

E1.12 In the event the Supplier goes into Liquidation as outlined in clause H1.1(b) and H1.1(c) or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1, the Supplier (or a liquidator or provisional liquidator acting on behalf of the Supplier) shall at its own cost and at no cost to the Authority: -

- a) conduct a full and thorough search for any electronic and paper records held by the Supplier which contain Authority Data/Information/Information relating to a customer/service user; in accordance with the Authority instructions;
- b) return all such records as described in clause E1.12(a) to the Authority in accordance with their instructions;
- c) permanently destroy all copies of any relevant electronic records; and
- d) provide written confirmation to the Authority that the actions outlined above in this clause have been completed.

E1.13 In the event of a Sub-contractor being in Liquidation (in accordance with clause F1.2) then it is the responsibility of the Supplier to recover records held by the Sub-contractor and provide assurance to the Authority that they have been recovered.

E1.14 In the event the Supplier is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the administrator to ensure the Supplier is able to maintain Authority and other records they have created and held in accordance with this clause E1 of this Contract and maintain these standards in the safekeeping of Authority information, i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

E1.15 Whilst in Administration the duty of the administrator is to help the Supplier trade. This may involve the administrator seeking an organisation to buy the Supplier's business or any part of it. The assignment or novation of this Contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior Approval obtained. Where the Contract is assigned or novated with prior Approval, the Supplier must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

## **E2 Protection of Personal Data**

E2.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with all of the applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection

Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

E2.1A The Authority shall be the Data Controller of the information listed in Schedule 12 Annex B Part 1.

E2.2 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Supplier is the Data Processor unless otherwise specified in Schedule 12.

E2.3 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.4 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include (without limitation): -

- 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.

E2.5 The Supplier shall, in relation to any Personal Data processed or to be processed in connection with its obligations under this Contract: -

- a) process that Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Schedule 12, unless the Supplier is required to process the Personal Data otherwise by Law. In such case, the Supplier shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures) having taken account of the: -

- (i) nature of the Personal Data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) implement any Protective Measures at the Supplier's own expense and at no cost to the Authority;
- c) ensure that it and its staff: -
- (i) do not process Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those staff who need to access Personal Data to meet the Supplier's Data Processor duties under the Contract and Data Protection Legislation;
  - (ii) only collect Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Supplier shall not modify the format agreed with the Authority without the prior written consent of the Authority;
  - (iii) take all reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they: -
    - a. are aware of and comply with the Supplier's duties under this clause E2, E3 (Official Secrets) and E4 (Confidentiality);
    - b. are subject to appropriate confidentiality undertakings including between the Supplier and 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 Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Supplier shall give notice to the Authority of any disclosure of Personal Data that it or any of its staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and

- d. have undergone adequate training in the use, care, protection and handling of Personal Data;
- d) not transfer Personal Data outside of the European Economic Area or International Organisation unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled: -
  - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data.
- e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) using a secure method of transfer to the Authority on expiry or earlier termination of the Contract unless the Supplier is required by Law to retain the Personal Data;
- f) permit the Authority or the Authority's designated representative or external auditors to inspect and audit the Supplier's Data Processor activities (and/or those of its staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Supplier is in full compliance with its obligations under the Contract.

E2.6 Subject to clause E2.7, the Supplier shall notify the Authority 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, notice, 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.
- E2.7 The Supplier's obligation to notify the Authority under clause E2.6 shall include the provision of further information to the Authority as soon as reasonably practicable as details become available.
- E2.8 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E2.6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing: -
- a) the Authority with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request promptly and in any event within the relevant timescales set out in the Data Protection Legislation;
  - c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Authority following any Data Loss Event including but not limited to such assistance to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that a Data Loss Event of the same nature does not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subjects of the Data Loss Event; and
  - e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- E2.9 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this clause E2. This requirement does not apply where the Supplier employs fewer than 250 staff, unless: -
- a) the Authority determines the processing is not occasional;
  - b) the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- E2.10 The Supplier shall keep a record of any processing of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR and upon request provide a copy of the record of the processing of any Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.11 The Supplier shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.
- E2.12 Before allowing any Sub-processor to process any Personal Data under this Contract, the Supplier must: -
- a) notify the Authority in writing of the intended Sub-processor and processing;
  - b) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data under the Contract;
  - c) enter into a written contract with the Sub-processor which reflects the terms set out in this clause E2 such that they apply to the Sub-Processor as a Data Processor; and
  - d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- E2.13 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor and/or staff.
- E2.14 The Authority may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable Data Controller/Data Processor standard clauses or similar terms forming part of an applicable certification scheme under the Data Protection Legislation (which shall apply when incorporated by an attachment to this Contract).
- E2.15 The Supplier shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.
- E2.16 The Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier or any of its staff of this clause E2.

**E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

E3.1 The Supplier shall comply with, and shall ensure that its staff comply with, the provisions of: -

- a) the Official Secrets Acts 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

E3.2 Any breach by the Supplier of this clause E3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

**E4 Confidential Information**

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall: -

- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E4.2 Clause E4 shall not apply to the extent that: -

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality to the information owner prior to its disclosure;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other Party's Confidential Information.

E4.3 The Supplier may only disclose the Authority's Confidential Information to the staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such staff are aware of and shall comply with these obligations as to confidentiality.

E4.4 Any breach by the Supplier of clauses E4.1-E4.3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

- E4.5 The Supplier shall not, and shall procure that the staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.6 At the written request of the Authority, the Supplier shall procure that members of staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.
- E4.7 Nothing in this Contract shall prevent the Authority from disclosing the Supplier's Confidential Information: -
- a) to any government department, any part of the Crown, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body;
  - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
  - e) on a confidential basis for the purpose of the exercise of its rights under the Contract, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Contract (clause F1.8), to a Replacement Supplier (clause H6.2) and Exit Management rights, and for the purpose of the examination and certification of the Authority's accounts; or
  - f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.8 The Authority shall use all reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.9 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the



other Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.10 Clauses E4.1-E4.7 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or Confidential Information, which is specified as being exempt from disclosure under this Contract, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.12 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

## **E5 Freedom of Information**

E5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Supplier shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Supplier shall and shall procure that its Sub-contractors shall: -

- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E5.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.

E5.5 The Supplier acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services: -

- a) in certain circumstances without consulting the Supplier; or
- b) following consultation with the Supplier and having taken their views into account.

E5.6 Where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

E5.7 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.8 The Supplier acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5 and/or any other legal requirement.

## **E6 Publicity, Media and Official Enquiries**

E6.1 The Supplier shall not: -

- a) make any press announcements or publicise this Contract 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 written consent of the Authority, which shall not be unreasonably withheld or delayed.

E6.2 Both Parties shall each take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

E7.1 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Authority's Security Requirements. The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Supplier's Systems Environment.

E7.2 The Supplier shall ensure that its staff comply with the Authority's Security Requirements.

**E8 Intellectual Property Rights**

E8.1 Save as granted under the Contract, neither the Authority nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Supplier acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may exist in the Authority Data.

E8.2 The Authority shall grant the Supplier a non-exclusive, revocable, royalty free licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Supplier to supply the Services. The Supplier shall have the right to sub license the Sub-contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Supplier shall cease use, and shall ensure that its staff cease use of the Authority's Intellectual Property Rights.

E8.3 The Supplier shall grant the Authority a non-exclusive, revocable, royalty- free licence for the Contract Period to use the Supplier's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Supplier's Intellectual Property Rights.

E8.4 All Intellectual Property Rights in any Authority Data or other material: -

- a) furnished to or made available to the Supplier by or on behalf of the Authority shall remain the property of the Authority; or
- b) prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Authority,

and the Supplier shall not, and shall ensure that the staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.

E8.5 With the exception of the O'Neil IT System, the Supplier shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall ensure that the owner of those rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-license shall also include the right for the Authority to sub-license, transfer, novate or assign to another Contracting Body, the Replacement Supplier or to any other third party supplying services to the Authority.

- E8.6 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, loss, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from: -
- a) items or materials based upon designs supplied by the Authority; or
  - b) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.
- E8.7 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier: -
- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - b) shall take due and proper account of the interests of the Authority; and
  - c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- E8.8 The Authority shall at the request of the Supplier provide to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Supplier's obligations under the Contract. The Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so save to the extent that such claim or demand is caused by the Authority's negligence or breach of contract.
- E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to: -
- a) modify any or all of the Services without reducing the performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms and conditions which are acceptable to the Authority,

and in the event that the Supplier is unable to comply with clauses E8.9(a) or (b) within twenty (20) Working Days of receipt of the Supplier's notification the Authority may terminate the Contract with immediate effect by notice in writing.

## **E9 Audit and the National Audit Office**

- E9.1 The Supplier shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's Representatives such access to those records as may be requested by the Authority in connection with the Contract. Save for Exceptional Audits provided in E10, Should the Authority exercise its right to undertake Audit during the Contract Period, this will be no more than once during the Contract Period.
- E9.2 The Supplier including its staff shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under Section 6(3) (d) and (5) of the National Audit Act 1983.
- E9.3 Except where an audit is imposed on the Authority by a Regulatory body, the Authority may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an audit for the following purposes: -
  - a) to verify the accuracy of any charges that become due and payable by the Authority to the Supplier in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Supplier (including Sub-contractors) in the provision of Services;
  - b) to review the integrity, confidentiality and availability of the Authority Data;
  - c) to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;
  - d) to review the Supplier's compliance with its obligations under the Contract;
  - e) to review any records created during the provision of the Services;

- f) to review any books of account kept by the Supplier in connection with the provision of the Services;
  - g) to carry out the audit and certification of the Authority's accounts;
  - h) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and
  - i) to verify the accuracy and completeness of any management information delivered or required by this Contract.
- E9.4 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- E9.5 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including: -
- a) all Information requested within the permitted scope of the audit;
  - b) reasonable access to any Premises or sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - c) access to the staff;
  - d) access to the Supplier's Systems Environment; and
  - e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.
- E9.6 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an audit.
- E9.7 If an audit identifies that: -
- a) the Supplier has committed a material Default capable of remedy; the Supplier shall correct such Default as soon as reasonably practicable and as directed by the Authority in accordance with clause F5.2.1;
  - b) the Authority has overpaid any charges that become due and payable by the Authority to the Supplier in respect of the Services, the Supplier shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the charges if the Supplier fails to make this payment; and

- c) the Authority has underpaid any charges that become due and payable by the Authority to the Supplier in respect of the Services, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Supplier within twenty (20) Working Days.

## **E10 Exceptional Audits**

E10.1 The Supplier shall permit the Authority and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Supplier in any of the following circumstances: -

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

E10.2 If the Authority notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with clause E9.5 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours. The requirement to give up to forty-eight (48) hours under this clause E10.2 shall not apply if the Authority reasonably believes that the Supplier is in Material Breach of any of its obligations under this Contract or Data Protection Legislation.

## **E11 Audit Costs**

E11.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses E9.3 to E10.2 (inclusive), unless an audit identifies a material Default by the Supplier in which case the Supplier shall reimburse: -

- a) the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- b) where the Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an audit under this clause, the Authority shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

## **E12 Malicious Software**

E12.1 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any loss and to restore the Services to their desired operating efficiency.

E12.2 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.1 shall be borne by the Parties as follows: -

- a) by the Supplier where the Malicious Software originates from the Supplier's Systems Environment or the Authority Data (whilst the Authority Data was under the control of the Supplier); and
- b) by the Authority if the Malicious Software originates from the Authority's Systems Environment or the Authority Data (whilst the Authority Data was under the control of the Authority).

## **F.CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

F1.1 Except where clauses F1.4 and F1.5 apply, the Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

F1.2 The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

F1.2A The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

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

F1.2B Prior to seeking Approval to the sub-contracting any of its obligations under this Agreement, pursuant to F1.1, the Supplier shall notify the Authority in writing of;

- a) the proposed Sub-contractor's name, registered office and company registration number;
- b) the scope of any Services to be provided by the proposed Sub-contractor; and



- c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on “arm’s-length” terms.
- F1.3 Where the Authority has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Supplier to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.
- F1.4 Notwithstanding clause F1.1, the Supplier may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Supplier under this Contract. Any assignment under this clause F1.4 shall be subject to: -
- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - c) the Authority receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Supplier assigns the right to receive the Contract Price under clause F1.4, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment at least five (5) Working Days prior to submission of the relevant invoice.
- F1.7 The provisions of clause C (Payment and Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to: -
- a) any Contracting Body;
  - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier’s obligations under the Contract.

- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the “**Transferee**”): -
- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- F1.11 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure it carries out whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F1A Advertising Sub-contractor opportunities**

F1A.1 The Supplier shall: -

- a) subject to clause F1A.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
- b) within ninety (90) days of awarding a subcontract 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 subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- d) provide reports on the information at clause F1A.1(c) to the Authority in the

format and frequency as reasonably specified by the Authority; and

- e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

F1A.2 Each advert referred to at clause F1A.1(a) shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

F1A.3 The obligation at clause F1A.1(a) shall only apply in respect of subcontract opportunities arising after the Contract award date.

F1A.4 Notwithstanding clause F1A.1, the Authority may by giving Approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

#### **F1A.5 Supply Chain Protection**

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

- a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- f) requiring the Sub-contractor to include a clause to the same effect as this Clause F1A.5 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

F1A.6 The Supplier shall 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.

## **F2 Waiver**

- F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not diminish or affect any other cause a diminution of the obligations established by the Contract.
- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).
- F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 Contract Change**

- F3.1 No Contract Change shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 11 (Change Control Procedure) and signed on behalf of the Parties except for the changes described in clauses E2.14 and E2.15 and where specified in clauses F3.3 and F3.4, which shall be made by the Authority without the requirement to be made through the Change Control Procedure and shall be made by the Supplier at no additional cost to the Authority.
- F3.2 The Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Contract which has the effect of: -
- a) rendering this Contract materially different in character from the original terms of this Contract as at the original signature date of this Contract;
  - b) changing the economic balance of this Contract in favour of the Supplier in a manner which is not provided for in this Contract as at the signature date of this Contract; or
  - c) extending the scope of this Contract substantially.

### **F3.3 Change in Law**

The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the Contract nor be entitled to an increase in the Contract Price as a 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 Contract Commencement Date.
- F3.4 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.3(b)), the Supplier shall:

- a) notify the Authority as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
  - (i) whether a Contract Change is required, including to the Services, the Contract Price and/or any other part of this Contract; and
  - (ii) whether any relief from the Supplier's obligations is required, including an obligation to meet a KPI; and
- b) provide the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractor(s);
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services;
  - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

F3.5 Any Contract Change required as a result of a General Change in Law shall be made by the Authority to the Contract without the requirement to be made through the Change Control Procedure.

F3.6 Any Contract Change to the Contract including for the avoidance of doubt, the Contract Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause F3.3(b)) shall be implemented in accordance with the Change Control Procedure.

#### **F4 Severability**

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **F5 Remedies in the Event of Inadequate Performance**

F5.1.1 The Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding: -

- a) the standard of Services;
- b) the manner in which any Services have been supplied;
- c) the manner in which work has been performed;
- d) the Equipment, materials or procedures the Supplier uses; or

- e) any other matter connected with the performance of the Supplier's obligations under the Contract.

F5.1.2 Without prejudice to its other rights and remedies under the Contract or otherwise, the Authority may, in its sole discretion, uphold a complaint and take further action in accordance with clause F5.2.1 or clause F5.2A of the Contract (as appropriate).

F5.2.1 In the event that the Authority reasonably believes that there has been a Default of the Contract by the Supplier, irrespective of whether the Default is a Material Breach, then the Authority may at no additional cost to the Authority and at the Supplier's own cost, without prejudice to its rights and remedies under the Contract or otherwise do any of the following: -

- a) request in writing that the Supplier remedies the Default within a period specified by the Authority; or
- b) require the Supplier to submit a Performance Improvement Plan in accordance with clause F5.2.2.

F5.2.2 The Supplier shall provide a Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of a written request from the Authority. The Performance Improvement Plan shall include details of why the Default has occurred, how the Default will be remedied and the date by which the Default will be remedied. The following actions in this clause F5.2.2 shall apply in respect of the Performance Improvement Plan: -

- a) The Authority shall either approve or reject in writing the Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of its receipt pursuant to this clause F5.2.2.
- b) If the Authority rejects the Performance Improvement Plan it shall set out the reasons and the Supplier shall address all such reasons in a revised Performance Improvement Plan, which it shall submit to the Authority within a further period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) ("**Revised Performance Improvement Plan**") of its receipt of the Authority's reasons.
- c) If the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) is agreed the Supplier shall immediately start work on the actions set out in the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate).
- d) If, despite the measures taken under this clause F5.2.2 the Revised Performance Improvement Plan cannot be agreed within a period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of receipt by the Supplier of the Authority's reasons in respect of the Performance Improvement Plan then the Authority may: -

- (i) end the Performance Improvement Plan process and refer the matter for resolution by the dispute resolution procedure set out in clause 1.2 (Dispute Resolution); or
- (ii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2.3 In the event that: -

- a) there is any subsequent Default which the Authority regards, at its sole discretion, as being substantially the same in character to a Default in respect of which a Performance Improvement Plan has been requested by the Authority in accordance with clause F5.2.1(b) or F5.2.4(i) which occurs within six (6) months of the request by the Authority for a Performance Improvement Plan to be provided under clause F5.2.2; or
- b) the Supplier is requested to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) in accordance with clause F5.2.2 or F5.2.4(i) but fails to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) at all,

then such Default shall be deemed to be a Material Breach of the Contract.

F5.2.4 In the event that a Default is not remedied to the satisfaction of the Authority in accordance with clause F5.2.1(a) or (b) the Authority may: -

- (i) request a Performance Improvement Plan from the Supplier in respect of the Default in accordance with clause F5.2.2, irrespective of whether a previous Performance Improvement Plan has previously been requested been and/or been approved; or
- (ii) refer the matter for resolution by the dispute resolution procedure set out in clause 1.2 (Dispute Resolution); or
- (iii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2A Without prejudice to clause F5.2.1, in the event that the Authority reasonably believes that there has been a Material Breach of the Contract by the Supplier, then the Authority may, without prejudice to its rights and remedies under the Contract or otherwise, do any of the following: -

- a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier has demonstrated to the reasonable satisfaction of the Authority that the Supplier can once more be able to supply all or such part of the Services in accordance with the Contract; or

- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; or
- c) terminate the whole of the Contract, in accordance with clause H2.1(b) (Termination on Default).

F5.3 Without prejudice to its rights under clause C3 (Recovery of Sums Due) the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party in accordance with clauses F5.2A (a) or (b) to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and the Supplier shall be responsible for its own costs.

## **F6 Remedies Cumulative**

F6.1 Except as otherwise expressly provided for by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F7 Monitoring of Contract Performance**

F7.1 The Supplier shall comply with the monitoring arrangements set out in Schedule 3 (Monitoring Requirements) including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

## **F7A Continuous Improvement**

F7A.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause F7A with a view to reducing the Authority's costs (including the Contract Price) and/or improving the quality and efficiency of the Services and their supply to the Authority.

F7A.2 Without limiting paragraph F7A.1 above, as part of this obligation, the Supplier shall produce a plan for improving the provision of Services ("**Continuous Improvement Plan**") for the approval of the Authority. The Continuous Improvement Plan shall also include, as a minimum, proposals in respect of the following:

- a) identifying the emergence of new and evolving technologies which could improve the File Store and/or the provision of Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- b) identifying and implementing efficiencies, and new or potential improvements in the Supplier's internal processes, including the quality, responsiveness, procedures, benchmarking methods, likely performance



mechanisms and customer support services that may lead to cost savings for the Authority and reductions in the File holding;

- c) identifying and implementing efficiencies in the Supplier's internal processes that may lead to cost savings;
- d) identifying and implementing efficiencies in the way the Authority interacts with the Supplier, including ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority;
- e) identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings;
- f) baselining the quality of the Supplier's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Contract Period; and
- g) measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Services, and identifying opportunities to assist the Authority in meeting its sustainability objectives.

F7A.3 The Supplier shall submit the initial Continuous Improvement Plan to the Authority for Approval within one hundred and eighty (180) Working Days of the Contract Commencement Date.

F7A.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Contracting Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Contracting Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of the Contract.

F7A.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph F7A.4 above:

- a) the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
- b) the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Contracting Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.

## **F8 Financial Assurance**

F8.1 The Supplier is required to disclose immediately to the Authority any material changes to its organisation that impacts on its on-going financial viability including details of the revenue replacement strategy and impact awareness on its organisation's profitability and stability where significant contracts are due to end.

F8.2 The Supplier is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.

F8.3 Only where requested by the Authority, the Supplier is required to provide any financial information which could include but is not limited to a copy of the annual accounts and annual returns.

F8.4 Where a Parent Company Guarantee has been requested by the Authority, the Supplier is required to provide the documents detailed in clause F8.3 for the Parent Company, including a translation and conversion (profit and loss, balance sheet and key balance sheet notes) into GBP (£), stating the conversion rate used.

## **F9 Extension of Initial Contract Period NOT USED**

### **F10 Entire Agreement**

F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F10.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding as referred to in this clause F10.2 shall be for breach of contract under the terms of the Contract.

F10.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in the following order of precedence: -

- a) the clauses of the Contract;
- b) the Schedules;
- c) any other document(s) referred to in the clauses of the Contract with the exception of the Tender;
- d) Supplier Guidance
- e) the Tender.

### **F11 Counterparts**

F11.1 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same agreement.

## **G. LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for: -

- a) death or personal injury caused by its negligence;
- b) fraud;
- c) fraudulent misrepresentation; or
- d) any Default of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.1A The Supplier's liability in respect of the indemnities in clauses B10, B11, B12, B13, C2.8, E2.16, E8.6 and E8.8 shall be unlimited.

G1.1B The Authority's liability in respect of the indemnities in clause B10 shall be unlimited.

G1.2 Subject to clause G1.3, the Supplier shall indemnify the Authority and keep the Authority indemnified fully: -

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Supplier and/or its staff or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) Not used (related to Participants)
- c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of: -
  - (i) the performance or non-performance by the Supplier of its obligations under the Contract subject to clause G1.4;
  - (ii) the presence of the Supplier or any of its staff on the File Store, including financial loss arising from any advice given or omitted to be given by the Supplier;
  - (iii) infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Supplier for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Authority; or
  - (iv) any other loss which is caused directly by any act or omission of the Supplier.

G1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by Default by the Authority of its obligations under the Contract.

G1.4 Subject always to clause G1.1, G1.2(a), G1.2(c)(ii), G1.2(c)(iii), G1.2(c)(iv) and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limits: -

- a) the aggregate liability of either Party for all Defaults that result in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed one hundred thousand pounds (£100,000); and
- b) the annual aggregate liability under the Contract of either Party for all Defaults (including any liability incurred under clause G1.5a) shall in no event exceed the greater of one hundred thousand pounds (£100,000) or one hundred and twenty-five per cent 125% of the Contract Price paid or payable by the Authority to the Supplier in the year in which the liability arises.

G1.4A Subject to clause G1.1, and without prejudice to clause H2, the Supplier's total aggregate liability:

a) in respect of all:

- (i) Service Credits; and
- (ii) Compensation for Critical Service Level Failure

Incurred in any rolling period of 12 months shall be subject in aggregate to the Service Credit Cap.

G1.5 Subject always to clause G1.1 and as specified in clauses E2.16 and G1.2(c)(iv), in no event shall either Party be liable to the other for any: -

- a) loss of profits, business, revenue or goodwill; and
- b) indirect or consequential loss or damage.

G1.6 The Supplier shall, in accordance with Schedule 15 (Insurance Requirements) effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including Public Liability Insurance covering liability for death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G1.7 The Supplier shall hold employer's liability insurance in respect of staff in accordance with any legal requirement from time to time in force.

G1.7A The Supplier shall procure that Sub-contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-contract.

- G1.8 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.9 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause G1.2.

**G2 Not used**

**G3 Warranties and Representations**

G3.1 The Supplier warrants and represents that: -

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- b) in entering the Contract it has not committed any Fraud;
- c) as at the Contract Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and during the Contract Period the Supplier shall disclose any change to the information referred to in this clause G3.1(c) and information in relation to the Prohibited Acts;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) 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 the Contract;
- f) 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;

- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract: -
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

#### **G4 Deed of Guarantee**

G4.1 Where a Guarantee is requested by the Authority, this Contract is conditional upon the Supplier procuring that the Guarantor shall: -

- a) execute and deliver the Guarantee to the Authority; and
- b) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.

G4.2 On satisfaction of clause G4.1, the Authority shall promptly notify the Supplier that those conditions have been satisfied.

G4.3 The conditions specified in this clause G4 are inserted solely for the Authority's benefit. The Authority may waive them, in whole or in part and with or without conditions, without prejudicing the Authority's right to require subsequent fulfilment of such conditions.

G4.4 Where a Guarantee has been requested by the Authority, for the avoidance of doubt, if clause G4.1 has not been satisfied, on or before the Contract Commencement Date this Contract shall not take effect.

### **H.DEFAULT, DISRUPTION AND TERMINATION**

#### **H1 Termination on Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the **Supplier is a company** and in respect of the Supplier: -

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in clauses H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of "Control" within the meaning of section 1124 of the Corporation Tax Act 2010 (as amended) ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of: -

- a) being notified that a Change of Control has occurred; or
- b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

H1.3 The Authority may terminate the Contract with immediate effect by notice in writing where the **Supplier is an individual** and: -

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
- b) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;

- c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of their assets;
- d) the Supplier is unable to pay their debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, seizure or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;
- f) they die or is adjudged incapable of managing their affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) they suspend or cease, or threatens to suspend or cease, to carry on all or a substantial part of the business.

H1.4 The Authority may terminate the Contract with immediate effect by notice in writing where the **Supplier is a partnership** and: -

- a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is dissolved for any reason;
- c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
- d) a receiver, or similar officer is appointed over the whole or any part of its assets;
- e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- f) any of the following occurs in relation to any of its partners: -
  - (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, their creditors;
  - (ii) a petition is presented for their bankruptcy; or



- (iii) a receiver, or similar officer is appointed over the whole or any part of their assets.

H1.5 The Authority may terminate the Contract with immediate effect by notice in writing where the **Supplier is a limited liability partnership** and: -

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is dissolved for any reason;
- c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- e) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- f) a receiver, or similar officer is appointed over the whole of any part of its assets;
- g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H1.7 The Authority may, at its sole discretion, appoint a Replacement Supplier on the same terms and conditions as this Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Supplier provided that the Replacement Supplier meets the pre-qualification criteria *and* the change in contractor does not result in any other substantial amendments to the Contract.

## **H1A Termination of Contract Under the Public Contracts Regulations 2015**

H1A.1 The Authority shall be entitled to terminate the Contract where: -

- a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
- b) the Authority 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;  
or

- c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

## **H2 Termination on Default**

H2.1 The Authority may without prejudice to any other right or remedy available to it terminate the Contract by written notice to the Supplier with immediate effect or such period as specified by the Authority in writing if the Supplier commits a Default and if: -

- a) the Default is not, in the opinion of the Authority capable of remedy;
- b) the Default is a Material Breach of the Contract.

H2.2 Without prejudice to the provisions of clause H1, H1A or H2.1 or to any other right or remedy available to the Authority, where the Authority considers that the Supplier has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Authority shall be entitled to serve a written notice ("**Formal Warning Notice**") on the Supplier: -

- a) specifying that it is a Formal Warning Notice;
- b) giving details of the Persistent Breach; and
- c) stating that if the Persistent Breach recurs three (3) or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- a) twenty (20) Working Days after service of a Formal Warning Notice, the Supplier has failed to demonstrate to the Authority's satisfaction that the Persistent Breach specified has not continued and that the Supplier has put in place measures to ensure that such Persistent Breach does not recur;  
or
- b) within a three (3) month period after the date of service of the Formal Warning Notice, the Supplier has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred three (3) or more times within such three (3) month period and that the Supplier has put in place measures to ensure that such Persistent Breach does not recur,

then the Authority may deem such failure shall constitute a Material Breach and shall be entitled to exercise its rights under clause F5.2A.

H2.4 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data. The Supplier shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3 (Recovery of Sums Due).

### **H3 Break**

H3.1 The Authority shall have the right to terminate the Contract at any time (or as specified in Clause H8) by giving three (3) Months' written notice to the Supplier. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension.

H3.2 On the expiry or termination of this Contract or any part thereof: -

- a) the Supplier shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Supplier shall cease all use of all the Authority's Intellectual Property Rights and shall return or destroy, as the Authority requires all documents and materials (including those in electronic format) incorporating or referring to the same.

### **H4 Consequences of Expiry or Termination**

H4.1 Where the Authority terminates the Contract under clause F5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5 or clause H2, no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss reasonably incurred by the Supplier by reason of the termination of the Contract,

provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of loss reasonably and actually incurred by the Supplier as a result of termination under clause H3. Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to clause H3. Following such settlement, the Supplier shall, to the fullest extent lawfully permissible, be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which: -

- a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period; or
- c) is a claim by the Supplier for loss of profit, due to early termination of the Contract.

H4.4 On the expiry or termination of this Contract or any part thereof the Supplier shall: -

- a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
- c) return all Authority Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority;
- d) return all Personal Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority, where the Authority is the Data Controller and delete existing copies unless the Law requires storage of Personal Data and/or unless the Supplier is required to retain the Personal Data by Law;

- e) plan for the orderly handover of the Services to the Authority or its Replacement Supplier including compliance by the Supplier with the provisions of this clause H4.4 at no additional charge to the Authority or its Replacement Supplier; and
- f) provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Authority may reasonably require at no additional cost to the Authority to enable the Authority to provide the Services in-house or to procure their provision by a Replacement Supplier.

H4.5 Unless otherwise expressly provided in the Contract: -

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration. Nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses B12 and the Schedule referred to in B12, (C (Payment and Contract Price), (C (Payment and Contract Price), C3 Recovery of Sums, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H5 Disruption**

- H5.1 The Supplier shall take reasonable care to ensure that in performing its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the staff, the Supplier shall seek Approval in relation to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Supplier's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect or such period as specified by the Authority by notice in writing.
- H5.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In

addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

- H5.6 The Supplier shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to the Supplier's Systems Environment) to the Supplier's operations, and those of Sub-contractors, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

## **H6 Recovery upon Termination**

- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Supplier shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any of its staff. In the event the Supplier fails to do so, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its staff where any such items may be held.
- H6.2 At the expiry or early termination of the Contract Period (howsoever arising) or after the Contract Period the Supplier shall provide assistance to the Authority and the Replacement Supplier in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

## **H7 Exit Management**

- H7.1 The Parties shall comply with the exit management provisions set out in Schedule 14 Exit Management.

## **H8 Force Majeure**

- H8.1 Subject to the remaining provisions of this Clause H8, a Party may claim relief under this Clause H8 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- H8.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the

obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H8.3 Where the Supplier is the Affected Party, the Supplier shall not be entitled to claim relief under this Clause H8 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 Agreement.

H8.4 Subject to Clause H8.5, 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.

H8.5 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. The shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

H8.6 Where, as a result of a Force Majeure Event:

- a) the Supplier fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event, up to a continuous period of 30 days:
  - (i) the Authority shall not be entitled to exercise any rights to terminate this Agreement as a result of such failure, other than pursuant to Clause H3 (Break)
  - (ii) neither Party shall be liable for any Default arising as a result of such failure.

H8.7 The Supplier shall notify the other Authority as soon as practicable after the Force Majeure Event ceases or no longer causes the Supplier to be unable to comply with its obligations under this Agreement.

H8.8 Relief from liability for the Supplier under this Clause H8 shall end as soon as the Force Majeure Event no longer causes the Supplier to be unable to comply with its obligations under this Agreement.

## **I.DISPUTES AND LAW**

### **I 1 Governing Law and Jurisdiction**

I1.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts

of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

## **I 2 Dispute Resolution**

- I 2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.
- I 2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and its staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows: -
  - a) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
  - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
  - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.



- e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- g) Unless agreed otherwise in writing, in any mediation each Party shall bear its own costs of such mediation.

**FORM OF AGREEMENT**

This Contract has been entered into on the Contract Commencement Date stated at A2 – Contract Period.

**SIGNED** for and on behalf of

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

**SIGNED** for and on behalf of

Restore Records Management

Name      Ian Keppie

Position      Deputy Director – Head of Corporate Services

Signature      Ian Keppie

Name      Nigel Dews

Position      Managing Director

Signature      Nigel Dews

## **SCHEDULE 1 – SPECIFICATION, IMPLEMENTATION PLAN & KEY PERSONNEL**

### **1. General**

The following additional documents shall be deemed to be incorporated into this Contract. This Schedule 1 specifies:

- 1.1 in Part A, the Specification in accordance with which the Supplier shall provide the Services and including the responses to the tender provided by the winning bidder;
- 1.2 in Part B, the Implementation Plan, detailing the plan to implement the new service provision and actions, deliverables and timescales; and
- 1.3 in Part C, the Key Personnel and their Key Roles assigned to the Supplier to this contract in accordance with clause B.

## Part A – THE SPECIFICATION

### Definitions

In this Part A of Schedule 1, the following definitions shall apply:

<b>"Authority Representative"</b>	means an employee of the Contracting Authority who has been given the authority to represent the Contracting Authority on specified matters relating to this Contract .
<b>"Account Manager"</b>	means the Supplier's nominated person who is responsible for ensuring the successful delivery of the Supplier's record management service to the Contracting Authority.
<b>"Activity Commencement Date"</b>	means the date from which activities start on the Contract, if this date is later than the Commencement Date.
<b>"Authorised Recipients"</b>	means a member of Contracting Authority personnel who has authority to receive Items from the Heywood File Store.
<b>"Authority"</b>	means the Department for Work and Pensions and any references to "Contracting Authority" shall bear the same meaning.
<b>"Authority Customer"</b>	means members of the public who have made a claim for benefits.
<b>"Authority IT Support System"</b>	means the IT system owned by the Authority which the Supplier accesses via equipment provided by the Authority for IT support, currently known as 'TechNow'.
<b>"Barcode"</b>	means the optical machine-readable representation of data relating to the object to which it is attached. The Barcode currently used in the File Store is 10 numerical digits long with an alpha character at the end which is 'F' for file and 'B' for box.
<b>"Batch Destruction Transaction Number"</b>	means a unique reference number(s) allocated to Items during the destruction process.
<b>"Bulk"</b>	means a large number of Items or a large volume of Data.

<b>"Bulk Project"</b>	means an agreement between the Contracting Authority and Supplier to undertake specified project work within a specified timeframe.
<b>"Bulk Uplift"</b>	means large volume of Item Retrieval
<b>"Business Area"</b>	means a distinct Contracting Authority operational and back office function.
<b>"Contract"</b>	means this written agreement between the Authority and the Supplier consisting of these terms and conditions of contract and any attached Schedules, Appendices and any document referred to in the Schedules or Appendices.
<b>"Contract Commencement Date"</b>	means the date on which this Contract is signed/sealed.
<b>"Contracting Authority"</b>	means the Department for Work and Pensions and "Authority" shall bear the same meaning.
<b>"Corporate Ranged Box(es)"</b>	means a box which contains a number of Items which are registered on the RM System as one single Item. For this reason, Ranged Boxes can only be retrieved as a whole box.
<b>"Corporate Records"</b>	means records that detail how DWP is administered. These are generally for internal reference.
<b>"Courier"</b>	means the courier supplier to the Contracting Authority .
<b>"Courier Service"</b>	means the services supplied by the Courier.
<b>"Damage(d)"</b>	means the condition of a box, plastic wallet, cardboard cover or any other container of Items which is designated as damaged by the Contracting Authority or Supplier as it is no longer capable of holding or protecting the Items contained within.
<b>"Data"</b>	means any electronic data on the RM System including but not limited to Authority personnel records , Authority's Customer and personnel names , NINOs and data relating to Authority's Users, e.g. their name and staff number.

<b>"Departmental Records Officer Team (DRO Team)"</b>	means the Authority function responsible for the storage and management of Corporate Files and Registered Files.
<b>"Deputy Account Manager"</b>	means a deputy to the Supplier's nominated person who is responsible for ensuring the successful delivery of the Supplier's record management service to the Contracting Authority.
<b>"Destroy Now"</b>	means a Corporate Record or Registered File that has been identified by the Authority as requiring immediate destruction
<b>"Destroy/Destroyed"</b>	bears the same meaning as 'Destruction'
<b>"Destruction"</b>	means the physical destruction of select Items and the subsequent disposal of their waste in a safe and secure manner in accordance with paragraph 2.9 and electronic destruction and archiving of the electronic Item history (Data) associated with the hard copy Item. Destruction can apply to both single destruction and Bulk destruction.
<b>"Destruction Certificate"</b>	means the electronic documentation which the Supplier is required to produce to accompany all Destructions of Contracting Authority Items. This certificate details all Items destroyed per day.
<b>"Destruction Date(s)"</b>	means the date on which the Item is scheduled for Destruction.
<b>"Destruction Embargo"</b>	means an instruction imposed on the Authority or by the Authority to protect Items from Destruction until that instruction is lifted.
<b>"Document Repository"</b>	means the Authority's own system for storing and electronically re-calling scanned Items.
<b>"End to End"</b>	means the full lifecycle of Items from Intake to the File Store to Destruction activity and any residual activity resulting from the Item Destruction.
<b>"Equipment"</b>	means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
<b>"Estate's Integrator"</b>	means the Contracting Authority's third party supplier of estate integration services.

<b>"Exception"</b>	means an Item which is marked as an Exception in the RM System cannot be Destroyed until the status is reverted back to "closed" as specified by the Contracting Authority. This Exception marking instruction can also be notified to the Supplier by the Business Area through a change request. The Exception marking overrides all other Destruction instructions.
<b>"File Cover"</b>	means a plastic wallet or file jacket that carries documents inside.
<b>"File Store"</b>	means the storage facility which is located in Manchester Road, Heywood, Lancashire OL10 2PZ and any references to "Heywood File Store" shall bear the same meaning.
<b>"Implementation"</b>	means the activities undertaken during the Implementation Period
<b>"Implementation Period"</b>	means the period which starts at the Contract Commencement Date and expires at midnight at the end of the day before the Activity Commencement Date
<b>"Implementation Plan (IP)"</b>	means the plan set out in Schedule 1 Part B (Specification, Implementation Plan and Key Personnel)
<b>"Index", "Indexed", "Indexing"</b>	means the process by which Data relating to Items is recorded on the RM System.
<b>"Intake"</b>	means the submission of items to File Store and the acceptance by the Supplier.
<b>"Item(s)"</b>	means any Contracting Authority files, records, documents, Parent Files, Corporate Records, Registered Files, Supporting Post, boxes and Ranged Boxes which are to be stored in the File Store.
<b>"Management Information or MI"</b>	means the management information specified in Appendix C (MI Reporting) of Contract schedule 3 (Monitoring Requirements).
<b>"Non-Conformance Checklist"</b>	means a document owned by the Authority listing Non-Conformant Items and other objects to enable the Supplier to check if an Item is conformant.

<b>"Non-Conformance Document"</b>	means a document designed by the Supplier to be used when returning Non-Conformant Items back to the Authority detailing what is required for rectification.
<b>"Non-Conformant"</b>	means Contracting Authority Items and other objects which the Supplier is not required to store or manage under the terms of this Contract. The Contracting Authority will provide the Supplier with a list of Non-Conformant Items during the Implementation Period and this will be reviewed as and when required during the term of the Contract .
<b>"Non-Indexed"</b>	means items that have not been registered on the RM System prior to being sent to the Heywood File Store
<b>"Not Found"</b>	means any Item which cannot be located by the Supplier in its last registered position on the Record Management System.
<b>"Off-Site file store"</b>	means the off-site storage facility which the Authority will move to following termination or expiry of the Contract.
<b>"On-Site"</b>	means at the Site defined as the File Store.
<b>"Operational Hours"</b>	means the hours the Authority requires the Service to be available to support its operational delivery.
<b>"Other Government Departments (OGD)"</b>	means the Government departments other than the Contracting Authority.
<b>"Parent File"</b>	means the primary benefit file which is associated with the National Insurance Number (NINO). Each benefit type will have one Parent File associated with a NINO once a benefit is claimed by an Authority Customer. This means that a NINO may have a number of independent registered Parent Files associated with it.
<b>"Personal Data"</b>	shall have the same meaning given in Data Protection Legislation and shall include Special Categories of Personal Data.
<b>"Pick", "Picked", "Picking"</b>	means the process by which the Supplier will find and retrieve Items from the File Store.



<b>"Polylope"</b>	means a self-sealing mailing envelope used for the purposes of sending Items to the Contracting Authority via the Courier.
<b>"Privileged Users"</b>	means a User who has been granted additional privileges to undertake certain actions or make decisions on behalf of the Contracting Authority.
<b>"Public Records Act"</b>	means the Public Records Act 1958 (as amended, including as amended by the Freedom of Information Act 2005).
<b>"Put Away"</b>	means the process in which the Supplier places an Item into storage within the Racking System (or other storage type) within the File Store.
<b>"Racking System"</b>	means a warehouse storage solution designed to stack materials in horizontal rows with multiple levels.
<b>"Real Time (RT)"</b>	means systems that update information at the same rate as they receive data.
<b>"Receipt(ed)"</b>	means for the receiver of the Item to acknowledge the delivery and accept responsibility for the Item from that point forward.
<b>"Records Management System (RM System)"</b>	means the IT System utilised by the Supplier to fulfil the requirements specified for this Contract.
<b>"Registered"</b>	means the process by which an Item is recorded on the Record Management System.
<b>"Registered File"</b>	means records that are considered to be of public interest and are put into the public domain.
<b>"Report(s)"</b>	means a document setting out details of Supplier' activities undertaken as required by the Authority.
<b>"Retrieval(s)", "Retrieve", "Retrieved"</b>	means the process by which an Item is requested for Return to the Business Area from storage in the File Store.
<b>"Return(ed)"</b>	means an Item which is being returned to the File Store (having previously being stored in the File Store before being sent back out to the Contracting Authority).
<b>"RS Web System"</b>	means the User front end of the RM System accessible to the Authority.

<b>"Scanning"</b>	means the scanning of an Item and the saving of it to the Contracting Authority's Documents Repository System.
<b>"Security Incident Management"</b>	means the process of identifying, managing, recording and analysing security threats or incidents in Real-Time
<b>"Services"</b>	means the services that will be provided by the Supplier as set out in Contract Schedule 1 (Specification, Implementation Plan & Key Personnel).
<b>"Site"</b>	means a designated Authority office or other Authority location.
<b>"Specification"</b>	means a document that sets out the Services required for the management of the Authority's hard copy records and Items.
<b>"Supplier"</b>	means the provider with whom the Authority has entered into the Contract .
<b>"Supplier Guidance"</b>	means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Supplier prior to the Contract Commencement Date, and any other instructions and recommended practices notified by the Authority to the Supplier from time to time.
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier.
<b>"Supporting Post"</b>	means an Item received via the Courier that relates to a Parent File.
<b>"Transferring Equipment"</b>	means the equipment held at the File Store as better described and listed in Schedule 16
<b>"UK"</b>	means all areas of the UK (England, Scotland, Wales and Northern Ireland).
<b>"Unique Location"</b>	means a location within the File Store where the Item is located which can be identified within the Records Management System.

**"Urgent Priority Requests"**

means a request for an Item to be Retrieved from the Heywood File Store which needs to be sent to the Authority on the same day as the request.

**"User"**

means either a member of Contracting Authority personnel or an employee within the Supplier organisation who has access to the Records Management System.

**"Vetting Procedures"**

means the Contracting Authority's procedures for the vetting of personnel as advised to the Supplier by the Contracting Authority.

**"Weeding"**

means the Supplier extracting documentation from the Contracting Authority's Items as specified by the Contracting Authority.

**"Working Day"**

means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business

## **1. THE SPECIFICATION**

### **1.1. INTRODUCTION**

- 1.1.1. The Department for Work and Pensions (DWP) (hereinafter referred to as the "Authority") is seeking to establish a Contract for the provision of a records management service. The purpose of this Contract is to appoint a single Supplier who will be responsible for the provision of a records management service which shall include, but shall not be limited to:
  - 1.1.1.1. an On-Site records management service;
  - 1.1.1.2. audit - validation, reconciliation and consolidation of all Items;
  - 1.1.1.3. the management of the Records Management System (RM System);
  - 1.1.1.4. security of Items;
  - 1.1.1.5. destruction of Items
  - 1.1.1.6. account management;
  - 1.1.1.7. reporting;
  - 1.1.1.8. continuous improvement; and
  - 1.1.1.9. Implementation.
- 1.1.2. The Authority published a Prior Information Notice 2020/S 212-520553 on 30/10/2020 in the Official Journal of the European Union (OJEU). The procurement has been advertised by publishing a Contract Notice in the OJEU under the open procedure in accordance with the Public Contracts Regulations 2015.
- 1.1.3. In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in the 'definitions and interpretation' section within the Contract and the glossary of this Specification.

### **1.2. SCOPE OF REQUIREMENT**

- 1.2.1. This Contract is for the provision of Services relating to the management of the Authority's hard copy records only and does not include any of the Authority's electronic records, except for the provision of the ad-hoc element of the Services relating to the Scanning of hard copy records as may be requested by the Authority from time to time as set out in paragraph 4.4 of this Specification.
- 1.2.2. The Supplier shall not be required to provide any transport under this Contract, as transport shall be provided through the Authority's arrangements under their Courier Service (except transportation required for the ad-hoc Bulk Project Transfers, as requested by the Authority from time to time as set out in paragraph 4.4.6 of this Specification).
- 1.2.3. The following sections provide details of the mandatory requirements that the Supplier shall be expected to fulfil in their entirety in order to meet the delivery requirements of the Services as detailed in this Specification and the corresponding Contract. It is essential that the Supplier takes time to fully understand the delivery requirements for the Services, as the Supplier shall be required to provide all of the requirements listed below from the Activity Commencement Date of the Contract:
  - 1.2.3.1. Section 01 - LOCATION
  - 1.2.3.2. Section 02 - CORE RECORDS MANAGEMENT REQUIREMENTS
  - 1.2.3.3. Section 03 - AUDIT REQUIREMENTS
  - 1.2.3.4. Section 04 - AD-HOC RECORDS MANAGEMENT REQUIREMENTS
  - 1.2.3.5. Section 05 - ADDITIONAL REQUIREMENTS
  - 1.2.3.6. Section 06 - ACCOUNT MANAGEMENT
  - 1.2.3.7. Section 07 – REPORTING
  - 1.2.3.8. Section 08 – CONTINUOUS IMPROVEMENT

### **1.3. LOCATION**

- 1.3.1. On-Site records management service – Heywood  
The Supplier shall provide the full End to End records management service at the Authority's designated location which shall be the Heywood File Store, which is located in Manchester Road, Heywood, Lancashire OL10 2PZ. Further details about the Heywood File Store can be found in Contract schedule 7 – Information about the Authority's premises. The Authority currently leases the premises at the Heywood File Store, and will therefore provide and pay for all costs associated with the management, maintenance and physical security of the Heywood File Store premises directly under its lease agreement.
- 1.3.2. Site Specific Information
- 1.3.3. There are areas of Heywood File Store which the Supplier is prohibited from accessing. These include:
  - 1.3.3.1. buildings 100 and 102 which is where the Authority DRO Team operates from for the storage and management of Corporate Files and contains Items of a sensitive nature;
  - 1.3.3.2. a locked storage area within Building 113, which is for the DRO Team use only;
  - 1.3.3.3. an office within building 110 (which is restricted to the Authority's authorised personnel only); and

- 1.3.3.4. the security building (which is restricted to the use of security personnel only).
- 1.3.4. 1.3.4The Authority will notify the location of such prohibited areas and buildings to the Supplier on commencement of the Implementation Period. Whilst the Supplier is not required to undertake activities within the scope of supporting services as described in this paragraph 1.3.4, in the course of providing the Services, they shall work, as necessary, with the Authority's third party suppliers of such supporting services. Supporting services are broadly those services which relate to the infrastructure of the File Store. They include, but are not limited to:
- 1.3.4.1. facilities management;
  - 1.3.4.2. services carried out by the Estate's Integrator; and
  - 1.3.4.3. the Courier Service.
- 1.3.5. In relation to their obligations as set out at paragraph 1.3.4 above, the Supplier is required to notify the relevant third party supplier of supporting services of issues arising in respect of the File Store which are the responsibility of that third party supplier to resolve. Full details of the processes required will be provided within the Supplier Guidance.
- 1.3.5.1. for issues relating to facilities management and the Estate's Integrator is via the Sodexo Helpdesk on 0870 606 0065.
  - 1.3.5.2. for issues relating to the Courier Service contact the Royal Mail Relay Service Support helpdesk via telephone on 0345 604 2877, or by email on [bd.cs@royalmail.com](mailto:bd.cs@royalmail.com)
- 1.3.6. Operational Hours - The Supplier shall ensure that the Records Management Service is open, staffed and operational between the hours of 07:00 – 16:00 hours Monday to Friday (as a minimum) and in line with UK public holidays (hereinafter referred to as "Operational Hours"). The Authority reserves the right to change these times and will liaise with the Supplier if Operational Hours change.

The Supplier shall not provide the Services on the following bank / public holidays;

New Year's Day	Spring Bank Holiday
Good Friday	August Bank Holiday
Easter Monday	Christmas Day
May Day	Boxing Day
The Friday or the Tuesday immediately preceding or succeeding the Spring Bank Holiday.	A day other than a Saturday or Sunday which falls within the Christmas holiday period.
The Queens Platinum Jubilee (Friday 3 June 2022)	

## **2. CORE RECORDS MANAGEMENT REQUIREMENTS**

### **2.1. INTAKE & RETURNS**

- 2.1.1. Upon arrival the Supplier shall conduct a physical check against the Authority's Non-Conformance Checklist to identify any Items that are Non-

Conformant. The Authority's Non-Conformance Checklist shall be provided as part of Implementation.

- 2.1.2. Where an Item delivered is deemed as Non-Conformant by the Supplier, the Supplier shall ensure that it attaches a Non-Conformance Document to each Item to explain why the Item has been returned and send back via Courier. The Supplier shall provide a template for the Non-Conformance Document, which it must present to the Authority for approval, as part of Implementation.
- 2.1.3. Where an Item is deemed by the Supplier to be Damaged prior to it being processed and Put Away into the File Store for storage, the Supplier shall replace any box and any associated Barcode and labelling, as may be required at no additional cost to the Authority.
- 2.1.4. The Supplier shall ensure that it allocates a Unique Location in the File Store for all Items within 24 hours of Receipt by the Supplier.

## **2.2. INTAKE OF ITEMS**

- 2.2.1. The Supplier shall reconcile all Items against the RM System and record the Intake of the Items into the RM System within 6 hours of Receipt. The Supplier shall then Put Away the Items in to a box for storage within the File Store within 24 hours of receiving the Item. The Supplier shall ensure that the Item is available for Retrieval within 48 hours of its Receipt.

## **2.3. STORAGE**

- 2.3.1. The Supplier shall manage the storage of all the Authority's hard copy records, which must be stored, at all times with the handling caveat of OFFICIAL, as set out in the link below (HM Government's Security Classifications), or, in accordance with any subsequent replacement standards as may be specified by the Authority (or the Government) from time to time:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715778/May-2018\\_Government-Security-Classifications-2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf).
- 2.3.2. The Supplier shall take all reasonable steps to ensure that all Items held in storage are protected against deterioration, including but not limited to water damage, fire and smoke damage, chemical substance damage and pests.
- 2.3.3. The Supplier shall ensure the behaviour of employees does not have a detrimental impact to Items held in storage.
- 2.3.4. The Supplier shall immediately report to the Authority via the Authority Representative any issues relating to building maintenance and security that may impact upon its responsibilities.

## **2.4. ON-SITE FILE STORE:**

- 2.4.1. The Supplier shall ensure Items are stored in such a way that best utilises the storage space available in the File Store. The Racking System in the File Store is owned by the landlord of the Heywood File Store premises, and not the Authority. The Supplier shall manage the records management service and storage in accordance with the existing configuration of the Racking System. Contract schedule 7 – Information about the Authority's premises provides further details about the

dimensions of the Boxes that the Supplier shall utilise, to maximise space utilisation within the current configuration of the Racking System, see also paragraph 2.5 Space Creation Management.

- 2.4.2. The Authority reserves the right to redesign and refit the Racking System in the File Store at any point, but does not provide any guarantees to this effect. The Authority will advise the Supplier at the earliest opportunity in the event that any proposals for redesign and / or refitting of racking are being considered. If requested by the Authority, the Supplier shall work collaboratively with the Authority to develop any new proposals for the redesign and refitting of the File Store.
- 2.4.3. The Supplier can suggest the redesign and refitting of the Racking System in the File Store at any point via the Authority Representative. The Authority reserves the right to accept or reject any new proposal at its sole discretion.

## **2.5. SPACE CREATION MANAGEMENT:**

- 2.5.1. The Supplier shall undertake ongoing space creation activity as part of the core records management service to realise quantifiable space within the File Store at no additional cost to the Authority, with the exception of costs associated with the Destruction of the Item which will be charged at the agreed rate. Parameters, targets and timescales will be agreed during Implementation and reviewed on a monthly basis as part of ongoing contract performance management activity.

## **2.6. ITEM MAINTENANCE:**

- 2.6.1. Whilst Items are held within the File Store, the Supplier shall maintain all physical Items to the level specified (during Implementation) by the Authority, at no additional cost to the Authority.
- 2.6.2. The Supplier shall be responsible for ensuring that any Items do not become Damaged whilst in the File Store.
- 2.6.3. As and when any Damage may be identified to boxes, or File Covers (which hold Items) the Supplier shall immediately replace them including replacing all required labelling and Barcodes at no additional cost to the Authority. If boxes or File Covers are deemed unrepairable or irreplaceable the Supplier shall notify the Authority.

## **2.7. RETRIEVAL**

- 2.7.1. The Supplier shall provide a Retrieval service to the Authority, accepting requests for Retrievals via the RM System which includes but shall not be limited to:
  - 2.7.1.1. Picking Items from shelves (or pallets) from the File Store;
  - 2.7.1.2. preparing Items for transportation via the Courier Service.
  - 2.7.1.3. Should access to multiple Items be required, the Supplier shall Retrieve all the Items as requested.
- 2.7.2. In the event that the RM System is unavailable to the User, the Supplier shall accept Retrieval requests via telephone, post, email and facsimile. Telephone requests shall require a confirmation email prior to the Supplier releasing the Item to a Business Area. The Supplier shall ensure that all such requests received under these circumstances, are recorded on the

- RM System by the Supplier within 3 hours of the RM System becoming available again and can therefore be tracked in the RM system.
- 2.7.3. The Supplier will have in place a process for dealing with Urgent Priority Requests where an Urgent Priority Request is received before 13:00hrs on the day of request, making available for collection the same day. The Supplier shall ensure that the RM System is updated in Real Time to track the movement of the Item(s) during the Retrieval process.
  - 2.7.4. The Supplier shall implement and manage formal procedures to prevent the dispatch of Items to any Site which has not been designated as an agreed delivery Site as detailed in the Courier's IT system. The Supplier shall have robust procedures in place to ensure that Items dispatched from the File Store are only sent to Authorised Recipients within the Authority. The Supplier shall notify the Authority (via the Authority Representative) of any requests for items to be delivered outside of this designated Site list within 24 hours.
  - 2.7.5. The Supplier shall ensure that the RM System is updated in Real Time to track the movement of any Retrieved Item during the Retrieval process. All Items that have been subject to a Retrieval request will be made available for collection the day after the Retrieval request was received.

## **2.8. RETRIEVAL – TRANSPORT**

- 2.8.1. The Supplier shall ensure that it utilises the Courier. The Supplier shall not charge Business Areas for transportation costs of Items as these costs will be paid for by the Authority via other contractual arrangements (excepting transportation required for Bulk Project transfers, as set out in paragraph 4.1.8 of this Specification).
- 2.8.2. The Supplier shall ensure that all Items relating to an individual Retrieval request are consolidated into a Polylope or box prior to being dispatched. The Supplier will be required to make use of the Courier web-based software to generate delivery address labels, the process for which will be included in detail in the Supplier Guidance. The Supplier shall then attach the delivery address label to each Item prior to the Item being made available for collection by the Courier. The Supplier shall ensure that each Item is sealed and secure prior to the Item being made available for collection by the Courier.

## **2.9. DESTRUCTION OF ITEMS**

- 2.9.1. The Supplier shall comply with the Authority's retention policy which can be found at <https://www.gov.uk/government/publications/dwp-information-management-policies/dwp-managing-customer-records-guide>.
- 2.9.2. The Supplier shall comply with the Authority's process for the Destruction of Items and the Supplier shall not Destroy Items without appropriate authorised instruction from the Authority, in accordance with the requirements specified by the Authority.
- 2.9.3. The Supplier shall ensure that all Items which are marked as 'Exception' either through markings on the RM System or as otherwise instructed by the Authority are not destroyed until the restrictions are explicitly removed by the Authority.



- 2.9.4. Upon receiving authorised instructions from the Authority, the Supplier shall Destroy all Items that are marked for Destruction by the Authority within 30 calendar days of the Destruction date as recorded on the RM System.
- 2.9.5. The Supplier shall ensure that all Items, which have been Picked and are pending Destruction are kept secure until they are destroyed.
- 2.9.6. In addition to complying with the requirement set out in this paragraph 2.9, the Supplier shall ensure that all Items are destroyed in accordance with;
- 2.9.7. BS EN 15713 Secure Destruction of Confidential Material (or agreed equivalent).

## **2.10. DESTRUCTION CERTIFICATE**

- 2.10.1. Following Destruction of Items, the Supplier shall provide an electronic Destruction Certificate, within 24 hours to the Authority in order to confirm proof of Destruction.
- 2.10.2. Within the Destruction Certificate, the Supplier shall provide, as a minimum:
  - 2.10.2.1. Reference of Item destroyed;
  - 2.10.2.2. Batch Destruction Transaction Number;
  - 2.10.2.3. the name or reference of the Supplier Personnel who undertook the Destruction;
  - 2.10.2.4. the date on which the Items were destroyed.
- 2.10.3. As soon as an Item has been destroyed, the Supplier shall archive all associated electronic Item history and Data held on the RM System for 6 months following Destruction. After the initial 6-month period has elapsed, the Supplier shall retain and securely store the Item history and Data in an accessible format in an archive database within the RM System until the archive database is scheduled for deletion.
- 2.10.4. The Supplier shall delete all Item history and Data held in the archive database after the time period specified by the Authority's retention policy has elapsed. The Supplier shall ensure the Data is deleted within 24 hours of the retention period elapsing.
- 2.10.5. Waste Disposal
- 2.10.6. The Supplier shall ensure that all waste created by the Destruction of Items is managed and disposed of appropriately, and in line with:
  - 2.10.6.1. BS EN 15713 The Secure Destruction of Confidential Material (or agreed equivalent);
  - 2.10.6.2. ISO14001 Environmental Management (or agreed equivalent).
- 2.10.7. The Supplier is required to have accreditation against the above standards (or agreed equivalent) and the ability to deal with waste in conformance with the standards above and this should be in place prior to the Activity Commencement Date.
- 2.10.8. The Supplier shall review the Destruction and Waste Disposal processes, including the Authority's authorisation levels, with the Authority as a minimum, on an annual basis.
- 2.10.9. The Authority's waste Items contain a mixture of white and coloured paper, cardboard and plastic.

## **2.11. RECORDS MANAGEMENT SYSTEM REQUIREMENTS**

- 2.11.1. Records Management System

- 2.11.2. The RM system will be wholly hosted and managed by the Supplier. The Supplier will be required to enter in to its own commercial arrangement for the licence for use of RS Web which is the software package used to run the RM System with the third party provider of the software package. The Supplier is required to fully manage and maintain the RM System on behalf of the Authority, using its own IT infrastructure to achieve this. The Authority will utilise the RS Web System through its Users for its operational requirements.
- 2.11.3. The Authority retains exclusive ownership of the electronic data recorded on the RM System (Data). The Data will be transferred to the Supplier prior to the Activity Commencement Date. This will include Personal Data for The Authority's Customers and personnel. The format for data transfer and all other requirements will be agreed between the Supplier and the Authority during Implementation.
- 2.11.4. The Supplier shall ensure that the RM System and Services comply in full with the Authority's requirements which are set out in the document called 'General IT Requirements', as set out in Contract schedule 7 – Information about the Authority's premises.
- 2.11.5. The Supplier is required to comply with the standards and requirements set out by the Authority during Implementation, in utilising the Authority's IT Support System for service management support activities.

## **2.12.RECORDS MANAGEMENT SYSTEM AVAILABILITY**

- 2.12.1. The Supplier shall ensure that the RM System is available and accessible to all Authority Users 100% of the time during the Authority's Operational Hours.
- 2.12.2. The Supplier shall ensure that the IT infrastructure supporting the RM System is available 24/7 365 days a year including public holidays, apart from during scheduled downtime, as agreed with the Authority in advance during the Implementation Period.
- 2.12.3. The Supplier should ensure that the running of any Reports does not adversely affect service availability.

## **2.13.SUPPORT FUNCTION**

- 2.13.1. The Supplier shall be required to provide a support function to answer any and all records management service enquiries within the scope of the Services and RM System enquiries between 07:00 hours to 19:00 hours Monday to Friday (as a minimum), and in line with UK public holidays.
- 2.13.2. The Supplier shall put forward a proposal for the best way to manage a support function for consideration by the Authority, such as telephony, email or web chat helpdesk.
- 2.13.3. The Supplier shall implement, manage and operate a formal procedure, including the provision of updates for incident management and complaints handling.
- 2.13.4. In any event, the Supplier shall provide the following elements are included within the Services:
  - 2.13.4.1. Ensure that the Supplier's support function accepts enquiries and requests for support and assistance from the Users
  - 2.13.4.2. Ensure that the support function has the capacity and capability to manage all inbound enquiries;

- 2.13.4.3. Ensure that an action plan outlining, as a minimum, a timeframe for resolving the issue or incident is issued to the Authority within three (3) hours of the Supplier being notified of the issue or incident;
- 2.13.4.4. Provide an out of hours' service, such as voicemail or auto-attendant, which is accessible to the Authority during out of hours (from 19:00 hours to 07:00 hours every day, 24 hours on non-Working Days, and 24 hours on UK public holidays). The Supplier shall ensure they respond to any out of hour messages on the next Working Day.

## **2.14. PROVISION OF CONSUMABLES**

- 2.14.1. The Supplier shall provide the Authority with the consumables required to fulfil the Contract. This shall include, but shall not be limited to;

- 2.14.1.1. **Boxes**

- The Supplier shall supply boxes to the Authority for Business Areas to use. Business Areas will submit requests for boxes to the Supplier via the RM System. The Authority retains the right to purchase boxes through alternative contractual arrangements and the Supplier shall accept these boxes providing that they are of the appropriate materials and dimensions.

- 2.14.1.2. **Barcodes**

- The Supplier shall supply Barcodes (box and file) to the Authority for Business Areas to use. Business Areas will submit requests for Barcodes to the Supplier via the RM System.

## **2.15. ADDITIONAL CONSUMABLES**

- 2.15.1. The Supplier is responsible for provision of consumables required by the Supplier to fulfil the Contract, which shall be provided at no extra cost to the Authority. This includes but is not limited to:

- 2.15.1.1. Euro pallets;
  - 2.15.1.2. British standard pallets;
  - 2.15.1.3. Shrink wrap.

## **2.16. SECURITY**

### **2.17. SECURITY POLICY**

- 2.17.1. The Supplier shall comply with all aspects of the Authority's security policy as set out in Contract schedule 6 - Security Requirements Level 1 And 2.

## **2.18. CORPORATE RECORDS AND REGISTERED FILES REQUIREMENTS**

- 2.18.1. The Authority's Corporate Records have a unique set of requirements which are bound to constraints outside of the Authority's control such as the Public Records Act. The requirements in this section relate exclusively to records that are classified as Corporate Records, and should not be applied to any other record type. If no specific requirement is detailed below, the requirements outside of this section will apply. The Supplier shall work under instruction of the On-Site Authority personnel within the DRO Team.

- 2.18.2. Intake – Corporate Records and Registered Files

- 2.18.2.1. The Supplier shall ensure all Non-Indexed Corporate Records and Registered Files sent into the File Store are Receipted, Barcoded, and Indexed in accordance with the Authority's Indexing instructions, Put Away in a Unique Location and entered into the RM System, within 24 hours of Receipt by the Supplier.
- 2.18.2.2. The Supplier shall ensure that Indexed Corporate Records and Registered Files that are Returned to File Store by the Authority are Receipted and Put Away within 48 hours of Receipt.
- 2.18.2.3. Where a Corporate Record or Registered File is deemed by the Supplier to be Damaged prior to it being processed and Put Away into the File Store, the Supplier must not replace any File Cover but shall contact the Authority's On-Site DRO Team for further instruction.
- 2.18.2.4. Where a Non-Conformant Corporate Record or Registered File is identified during Intake, the Supplier shall return the record along with a completed Non- Conformance Document to explain why the Corporate Record or Registered File has been returned to the Sender.
- 2.18.2.5. Where the information on the front of the Corporate Record or Registered File includes "Destroy Now" the Supplier shall deliver the Corporate Record or Registered File to the Authority's On-Site DRO Team. Upon instruction from the Authority's DRO Team the Supplier shall Destroy the record in accordance with the Authority's Destruction requirements.
- 2.18.3. Intake of Corporate Ranged Boxes
  - 2.18.3.1. The Supplier shall reconcile all Corporate Ranged Boxes against the RM System within 6 hours of Receipt by the Supplier. The Supplier shall Put Away the Corporate Ranged Boxes for storage within the File Store within 24 hours of Receipt. The Supplier shall ensure that the Corporate Ranged Boxes are available for Retrieval within 48 hours of Receipt.
- 2.18.4. Corporate Records and Registered Files Maintenance
  - 2.18.4.1. As and when any Damage may be identified to a Corporate Record or Registered File, the Supplier shall immediately report to the Authority's On-Site DRO Team for further instruction. The Supplier shall not replace Damaged File Covers.
- 2.18.5. Retrieval
  - 2.18.5.1. The Supplier shall provide a Retrieval service to the Authority via the RM System or email.
  - 2.18.5.2. Retrievals will include (but not limited to):
    - Picking Corporate Records and Registered Files from File Store; and
    - Preparing Corporate Records and Registered Files for transportation via the Courier Service, or for delivery to the On-Site DRO Team.
- 2.18.6. Retrieval – Transport
  - 2.18.6.1. The Supplier shall ensure that any Corporate Record or Registered File requested by the On-Site DRO Team are delivered to them in secure containers.

- 2.18.7. Destruction
  - 2.18.7.1. The Supplier shall not Destroy any Corporate Records or Registered Files without authorisation from the DRO Team.
- 2.18.8. Destruction History
  - 2.18.8.1. Following Destruction of a Corporate Record or Registered File the Supplier must permanently retain all associated electronic history and Data on the RM System.
- 2.18.9. Record keeping
  - 2.18.9.1. The Supplier must keep an audit trail of all activity undertaken when Corporate Records or Registered Files are sent to Other Government Departments (OGD's). The RM system must be updated to record the location of where Corporate Records and Registered Files were sent.
- 2.18.10. Management Information Reporting
  - 2.18.10.1. The Supplier will provide monthly Reports detailing any activity carried out on Corporate Records or Registered Files in File Store. The format and content for such monthly Reports will be agreed during Implementation.

### **3. AUDIT REQUIREMENTS**

#### **3.1. AUDIT**

- 3.1.1. The Authority anticipates exiting the Heywood File Store in 2023. The Supplier is required to support the exit by preparing all the Items within File Store and reducing the footprint for the move to an Off-Site file store. The Supplier shall undertake an audit and consolidation exercise to validate the Authority's hard copy Items and manage the space effectively within the Heywood File Store.
- 3.1.2. The Authority would expect the following as a minimum;
  - 3.1.2.1. **Validation**  
The Supplier shall ensure each Item reconciles with the RM System.
  - 3.1.2.2. **Reconciliation**  
The Supplier shall ensure each Item has the relevant Barcode and is reconcilable to the RM System.
  - 3.1.2.3. **Consolidation**  
The Supplier shall ensure each box is at its optimum capacity, taking into account the nature of its contents and at all times complying with the manual handling at work guidelines as per <https://www.hse.gov.uk/msd/manual-handling/index.htm>.
- 3.1.3. The Authority would like the Supplier to consider the merit of;
  - 3.1.3.1. **Segmentation**  
Separating Items i.e. by Business Area, by age, by Destruction Date.
- 3.1.4. The Supplier should put forward full proposals on their approach to this including advantages, disadvantages and any considerations the Authority should be aware of.
- 3.1.5. The Supplier will be required to include anything else not mentioned above that would benefit the Authority with the overall objective.

### **4. AD-HOC RECORDS MANAGEMENT REQUIREMENTS**

#### **4.1. BULK PROJECTS**

- 4.1.1. The Authority will require the Supplier to undertake Bulk Projects on an ad-hoc basis.
- 4.1.2. The Supplier shall be required to undertake Bulk Projects on an outcome/output basis i.e. payment against results.
- 4.1.3. Bulk Projects will be arranged through the Authority Representative and timescales will be determined between the Authority and the Supplier.
- 4.1.4. Upon receipt of instruction and the information required to undertake the Bulk Project, which the Supplier shall acknowledge receipt of within 24 hours, the Supplier shall provide the Authority with a clear proposal of how the project will be undertaken and the costs involved within 7 days. The proposal shall include but shall not be limited to;
  - 4.1.4.1. clear timescales for undertaking the Bulk Project;
  - 4.1.4.2. a detailed breakdown of costs;
  - 4.1.4.3. risks and dependencies; and
  - 4.1.4.4. key project benefits including but not limited to; savings against business as usual costs.
- 4.1.5. The Supplier shall undertake all necessary activity in connection with requests for ad-hoc Bulk Projects. This shall include, but may not be limited to:
  - 4.1.5.1. Bulk Intake of Items to the File Store or exporting Items to another location for Destruction;
  - 4.1.5.2. Bulk Marking of Files “not for Destruction” on Destruction Embargo exercises;
  - 4.1.5.3. Bulk Destruction of Files following the lifting of a Destruction Embargo;
  - 4.1.5.4. Bulk decant of Files to enable targeted reduction of File holding;
  - 4.1.5.5. Bulk changes of ownership of Files on internal reorganisation;
  - 4.1.5.6. Bulk amendments to Destruction Dates of Files;
  - 4.1.5.7. Bulk Uplift and transport of Items;
  - 4.1.5.8. Bulk Data upload and download on the RM system; and
  - 4.1.5.9. Weeding.
- 4.1.6. All Bulk Projects are to be performed as per the written instruction from the Authority.
- 4.1.7. Where required by the Authority the Supplier shall provide transportation for the ad-hoc Bulk transfer of Items. The Supplier shall hold and transport the Authority’s Items in such a way as to preclude theft, loss, Damage, unauthorised access, copying, alteration, substitution or disclosure. Where required by the Authority, the Supplier shall have the facility to provide the Authority with Real Time routeing information for the vehicle in which the Item is travelling and, if requested, provide the Authority with information on an Item’s location while in transit.
- 4.1.8. The Supplier shall manage their own pallet requirements at no cost to the Authority.

## **4.2. DATA UPLOAD AND DOWNLOAD**

- 4.2.1. The Supplier shall ensure all Data relating to the Items Registered on the RM System is accurate and kept up-to-date in Real Time at all times. The Supplier shall update the RM System with information regarding each Item’s location, movement and status changes in Real Time from Item creation to Destruction (including post Destruction archiving activity).

- 4.2.2. Updating Item Data On The RM System.
- 4.2.3. Upon request from the Authority, the Supplier shall amend all information stored on the RM System relating to an individual Item (including all Supporting Post linked to the Parent File) within 24hrs of the receiving the request.
- 4.2.4. The Supplier shall gain approval from the Authority Representative before making any changes to Data relating to Items on the RM System, other than those changes required to track a Record's Touch Points.
- 4.2.5. The Supplier shall provide the Authority with data update templates which the Authority will utilise to import the Data updates required. The Supplier shall then use these templates to upload the updates into the RM System. The Supplier shall ensure that it secures the Authority's approval, in writing, for the templates that it proposes to utilise during Implementation.
- 4.2.6. Bulk Data Upload to RM System
- 4.2.7. Where requested by the Authority, the Supplier shall upload Data to inform Bulk operational and (or) Data movement requirements. The Supplier shall confirm, in writing, that the Data has been received, decrypted and uploaded within 24 hours of the Data being received by the Supplier.
- 4.2.8. The Authority may use the following data transfer methods:
  - 4.2.8.1. Secure PGP Encrypted E-mail;
  - 4.2.8.2. PGP Encrypted USB memory stick.
- 4.2.9. The Supplier shall ensure provisions are in place to accept, handle and process these methods of data transfer.

### **4.3. INDEXING**

- 4.3.1. Upon request the Supplier shall provide an Indexing service to the Authority as set out in the Authority's Indexing instructions which shall be provided as part of Implementation.

### **4.4. SCANNING**

- 4.4.1. File Preparation Service
- 4.4.2. The Supplier shall upon request of the Authority Retrieve Items from their location in File Store and prepare the Items for Scanning and delivery to the Authority's third party Scanning provider.
- 4.4.3. The Supplier shall provide the Authority with a pre Scanning Item preparation service which shall as a minimum consist of the removal of all:
  - 4.4.3.1. staples;
  - 4.4.3.2. paper clips;
  - 4.4.3.3. treasury tags;
  - 4.4.3.4. other bindings leaving each piece of paper separate;and the trimming of pages to prepare the Item for Scanning where necessary subject to such trimming being kept to a minimum and carried out so as to avoid text and other content of each page.
- 4.4.4. The Supplier shall ensure that during the preparation activity the documents and pages are kept in the same order as they were prior to the preparation activity being undertaken.
- 4.4.5. The Supplier shall ensure the integrity of the Item prior to Scanning to ensure clarity of the image. Should the Supplier be required to use separators, the Supplier shall provide these at no additional cost to the Authority.
- 4.4.6. Supplier Scanning Service

- 4.4.7. The Supplier shall upon request scan Items into the Authority's Document Repository System (DRS) utilising the scanners provided by the third party Scanning provider and / or the Authority to the requirements and specifications set out by the Authority. Items will be scanned within 24hrs of the Authority's instruction being received. If large volume Scanning is required instructions will be supplied by the Authority on timescales for completion. The Supplier shall ensure that each Scanned Item is legible and complies in full with the quality standards set out by the Authority. Once the Item has been scanned and the quality standards set by the Authority have been met, the Supplier shall Destroy the Item in line with the Authority's Destruction requirements.

#### **4.5. NOT FOUND PROCEDURE**

- 4.5.1. On occasion, the Supplier will discover that Items expected to be in File Store will not be located at the point a search is conducted.
- 4.5.2. The Supplier shall implement and manage a Not Found procedure, which meets the Authority's requirements specified below, at no additional cost to the Authority. The Supplier shall put forward their detailed proposals for a Not Found Procedure, which will be followed for any Item the Supplier is unable to locate within Storage.
- 4.5.3. The Not Found procedure must include as a minimum:
- 4.5.3.1. taking any and all reasonable steps to locate the Item;
  - 4.5.3.2. timescales for resolutions;
  - 4.5.3.3. notification of Not Found status to the requester;
  - 4.5.3.4. provision of a Not Found incident report to the Authority (via the Authority Representative); and
  - 4.5.3.5. status update of the RM System for the missing Item.

### **5. ADDITIONAL REQUIREMENTS**

#### **5.1. EQUIPMENT**

- 5.1.1. The Supplier shall provide all Equipment required to perform the Services under this Contract (with the exception of Scanning equipment, which includes software and associated licences required for Scanning activity).
- 5.1.2. The Authority will provide the Supplier with IT hardware (laptops, dongles etc.) to enable it to access the Authority's infrastructure to provide a support function. The Supplier is required to comply with the standards and requirements set out by the Authority, ensuring accounts are kept valid and used at regular intervals. Security procedures and requirements will also need to be adhered to and the Supplier shall ensure any required training will be undertaken. The IT hardware provided to undertake this function will remain the property of the Authority.
- 5.1.3. The Supplier shall be responsible for the maintenance, repair, replacement de-commissioning and disposal of all of its own Equipment while performing the Services under this Contract, which shall include, but shall not be limited to:
- 5.1.3.1. machinery; and
  - 5.1.3.2. equipment (hardware and software).
- 5.1.4. In the event the Authority provides the Supplier with additional equipment to perform the service under this Contract (e.g. scanning equipment), the



Authority will be responsible for the maintenance, repair, and replacement of all of its own Authority equipment.

- 5.1.5. Details of maintenance agreements on both Equipment and Transferring Equipment shall be contained within Appendix H - Records Management Asset List.

## **5.2. ADVISORY SERVICES**

- 5.2.1. If requested by the Authority the Supplier shall be required to provide an advisory service free of charge which may include, but may not be limited to:
  - 5.2.1.1. audits;
  - 5.2.1.2. risk assessments; and
  - 5.2.1.3. advice on Bulk Destructions.

## **5.3. USER MANAGEMENT**

- 5.3.1. The Supplier shall provide a User Management function to the Authority at no additional cost. This function will undertake all activities relevant to the addition, removal and amendment of User accounts.
- 5.3.2. The Supplier shall ensure the RM System records the following information about Users and as a minimum includes the following data fields:
  - 5.3.2.1. primary User ID or User reference;
  - 5.3.2.2. full name;
  - 5.3.2.3. E-mail address;
  - 5.3.2.4. User status (such as new, suspended, terminated, re-certification required);
  - 5.3.2.5. necessary dates (such as User account start, termination, last-changed, re-activation); and
  - 5.3.2.6. group, job or other role/responsibility.
- 5.3.3. The Authority shall provide the IT hardware and software to enable the delivery of this function.

## **5.4. INCIDENT REPORTING & RESOLUTION**

- 5.4.1. The Supplier shall ensure a process is in place to report and resolve any security incidents that arise. This shall include but shall not be limited to:
  - 5.4.1.1. where IT systems have broken down;
  - 5.4.1.2. individuals have acted in breach of any of the Authority's standards. Further information on standards will be provided in Supplier Guidance;
  - 5.4.1.3. loss of Data;
  - 5.4.1.4. Damage to Data.
- 5.4.2. The Supplier shall ensure that in the event of any RM System downtime there are processes and resources in place to maintain the continuity of Services. The Supplier shall ensure that these processes are reviewed and updated on a minimum of six [6] monthly basis.
- 5.4.3. The Supplier shall ensure the recovery process, the security of the RM System, and the Authority's Data, is maintained throughout RM System downtime and ensure that Authority information is protected against loss by the implementation of formal and agreed backup and restore procedures.

- 5.4.4. The Supplier shall ensure that the backup of the RM System and all Data content must be automated and require no User intervention. The Supplier's restore process shall ensure that the security of the RM System and all Data content and their information is maintained throughout the process and that the information is protected against loss by the implementation of formal and agreed backup and restore procedures which meet the Authority's requirements, as set out in Contract schedule 6 – Security Requirements Level 1 and 2.

## **5.5. AUDIT REQUIREMENTS**

- 5.5.1. The Supplier shall ensure that audit trails are protected to the same level as the information handled by the RM System.
- 5.5.2. The Supplier shall ensure that Users who have global access to the RM System are listed in a register which is maintained and up-to-date at all times, and the Supplier shall ensure that a one hundred per cent (100%) system audit trail of each User's activity is available for inspection by the Authority at all times.
- 5.5.3. The Supplier shall ensure the RM System audit on the assigning and removal of all passwords, including temporary passwords is maintained.
- 5.5.4. The Supplier shall ensure that all User logs, in event audit trails, include the following, as a minimum:
  - 5.5.5. User role and responsibilities;
    - 5.5.5.1. success or failure of the log-in request.

## **6. ACCOUNT MANAGEMENT**

### **6.1. ACCOUNT MANAGEMENT**

- 6.1.1. The Supplier shall within five (5) Working Days of the Contract Commencement Date send the name and contact details (including email address and telephone numbers) of the Account Manager and Deputy Account Manager for this Contract to the Authority.
- 6.1.2. The nominated Account Manager shall have industry experience in records management. The Supplier shall also ensure that the Deputy Account Manager's name and contact details (including email address and telephone numbers) are provided to the Authority prior to the Account Manager's unavailability and absence. The Supplier shall ensure that the Deputy Account Manager has the same delegated powers, Authority and discretion as the Account Manager.
- 6.1.3. The Account Manager shall:
  - 6.1.3.1. promote, deliver and communicate transparency of pricing and savings to the Authority;
  - 6.1.3.2. provide where required by the Authority a quarterly written communication which includes details of any changes, improvements, risk, issues, complaints, concerns and future plans;ensure that the Authority is informed about the Supplier's performance, proposed activity and outstanding issues in accordance with the requirements set out in Contract schedule 3 (Monitoring Requirements).  
provide monthly Supplier highlight reports to the Authority in accordance with Contract schedule 3 (Monitoring Requirements)

### **6.2. PERFORMANCE MONITORING**

- 6.2.1. The Supplier shall attend periodic Contract Performance Review meetings as set out in schedule 3 (Monitoring Requirements). Supplier attendance at these meetings is mandatory and shall be at the Supplier's own expense.

## **7. REPORTING**

### **7.1. MANAGEMENT INFORMATION (MI)**

- 7.1.1. The Supplier shall comply with the reporting and Management Information (MI) requirements set out in Contract schedule 3 (Monitoring Requirements).
- 7.1.2. The Supplier shall provide nominated Privileged Users with access to the RM system to view Real Time information and create and extract ad-hoc MI reports. Reports shall be available in the following formats: MS Excel, MS Access, CSV, MS Word, Adobe PDF.
- 7.1.3. The Supplier shall be required to provide additional MI on an ad-hoc basis. This MI shall include, but not be limited to:

### **7.2. CONTINUOUS IMPROVEMENT**

- 7.2.1. The Supplier shall be expected to proactively continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 7.2.2. The Supplier shall present new ways of working to the Authority during quarterly Contract review meetings.
- 7.2.3. Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

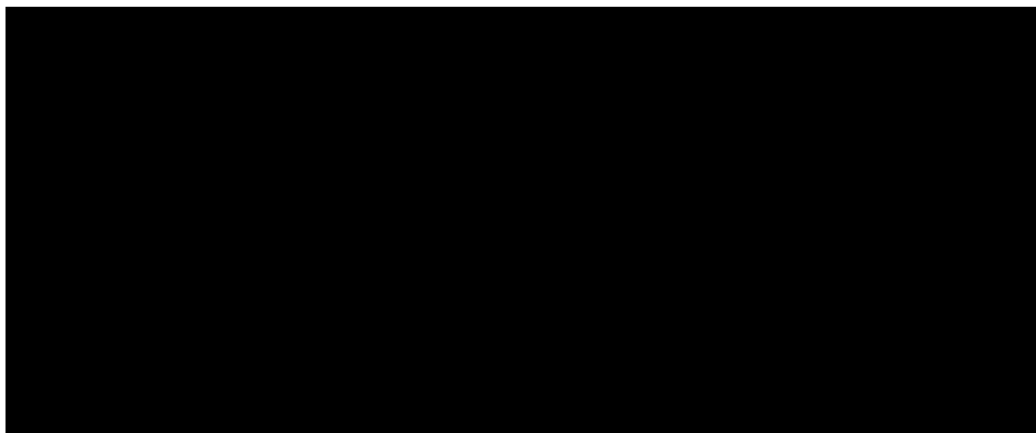
### **7.3. IMPLEMENTATION**

- 7.3.1. The Supplier shall refer to Schedule 1 – Part B.

## **8. SUPPLIERS RESPONSE – APPROACH TO THE AUDIT**

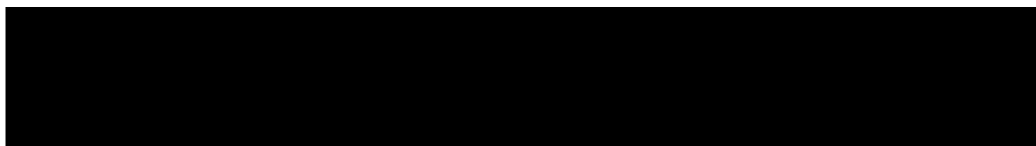
### **8.1. RESOURCE**

- 8.1.1.



### **8.2. APPROACH TO SITE PREPARATION WORKLOAD**

- 8.2.1.



- 8.2.2.



8.2.3.

8.2.4.

Table A2. Summary Assessment and Decision on Audit Approach				
#	Summary	Advantages	Disadvantages	Decision Comment

8.2.5.

8.2.6.

8.2.7.

8.2.8.

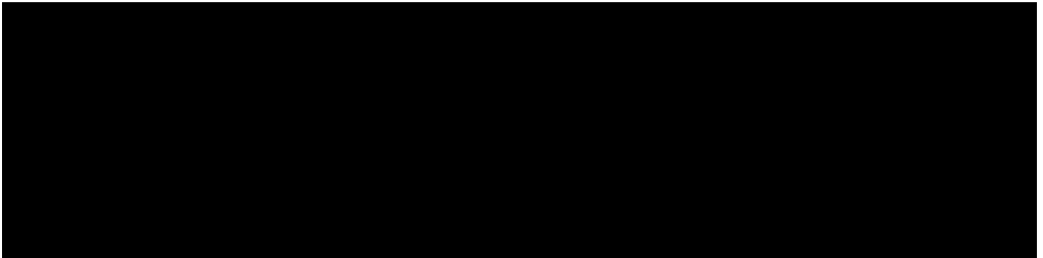


### **8.3. LAYOUT, PROCESS FLOWS AND DESCRIPTIONS**

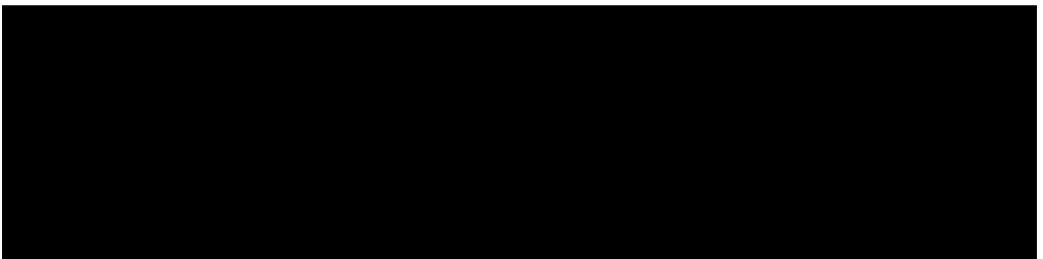
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8.3.2.

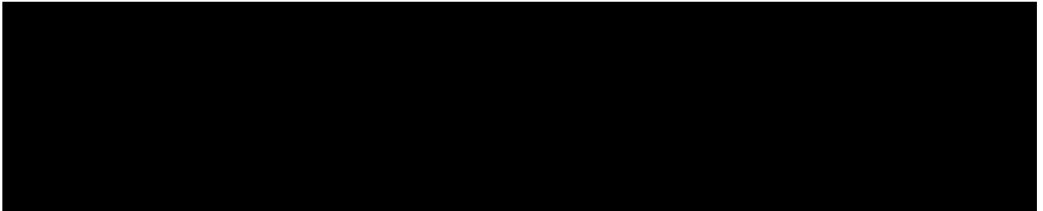


8.3.3.

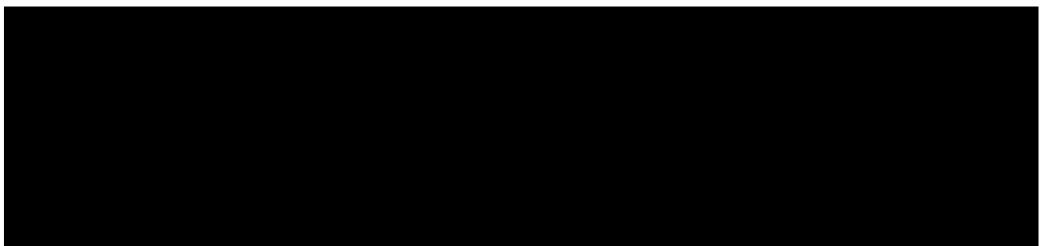


### **8.4. VALIDATION, RECONCILIATION, DESTRUCTION AND CONSOLIDATION**

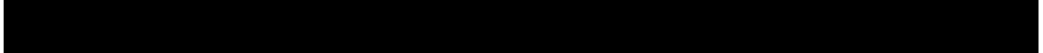
8.4.1.



8.4.2.



8.4.3.



8.4.4. [REDACTED]

8.4.5. [REDACTED]

8.4.6. [REDACTED]

8.4.7. [REDACTED]

8.4.8. [REDACTED]

8.4.9. [REDACTED]

8.4.10. [REDACTED]

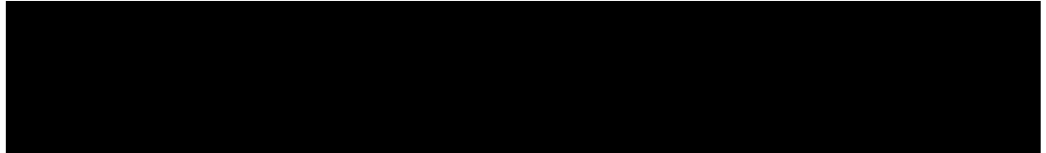
8.4.11. [REDACTED]

8.4.12. [REDACTED]

## **8.5. CONSOLIDATION**

8.5.1. [REDACTED]

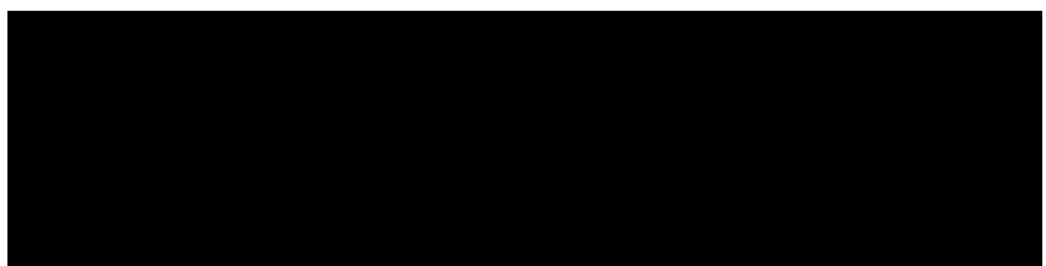
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8.5.3.

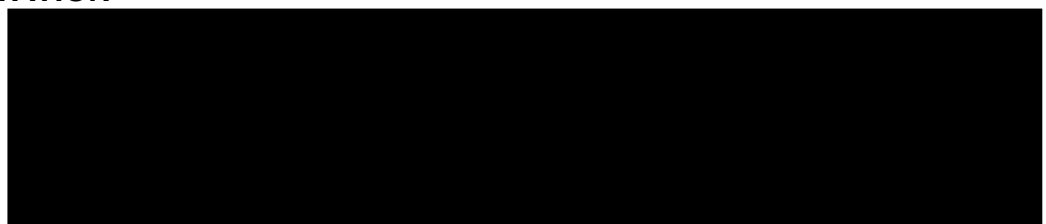


8.5.4.

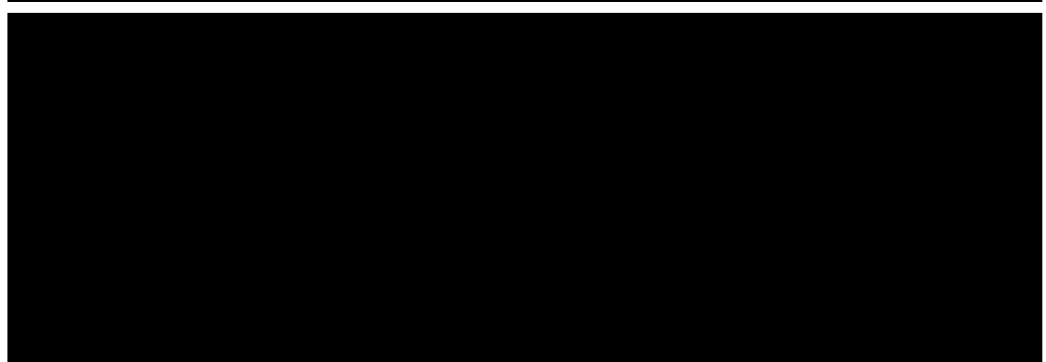


## **8.6. SEGMENTATION**

8.6.1.

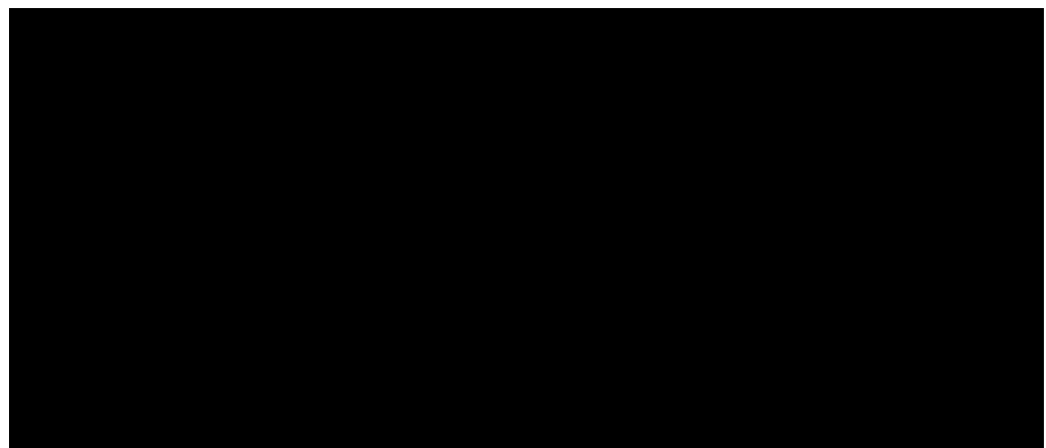


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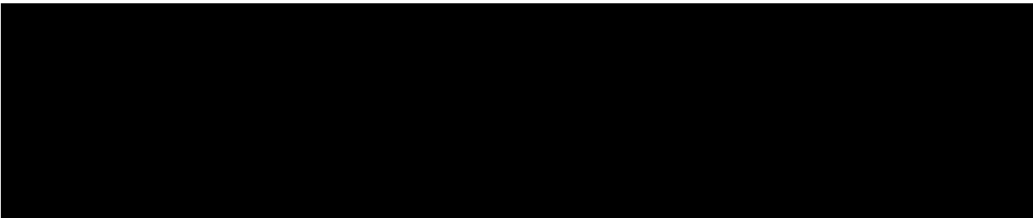


## **8.7. QUALITY CHECKING**

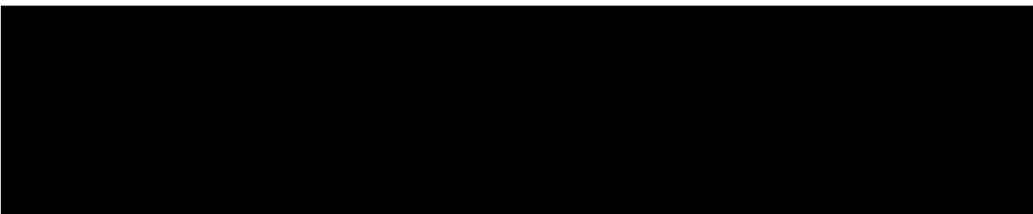
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8.7.2.

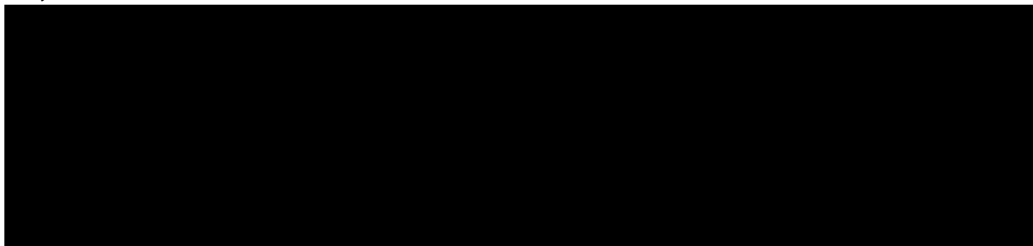


8.7.3.



**8.8. REPORTING, MI AND PROJECT GOVERNANCE**

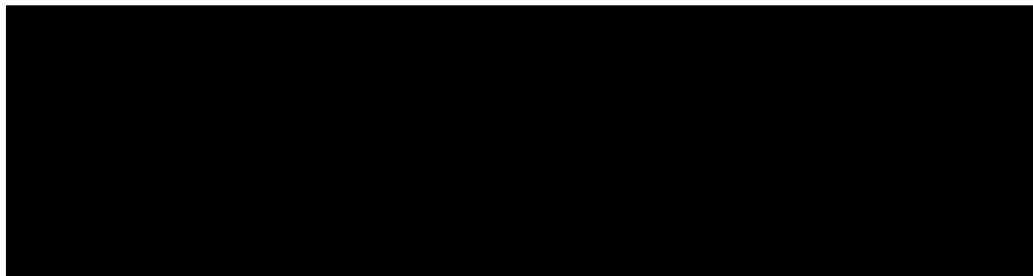
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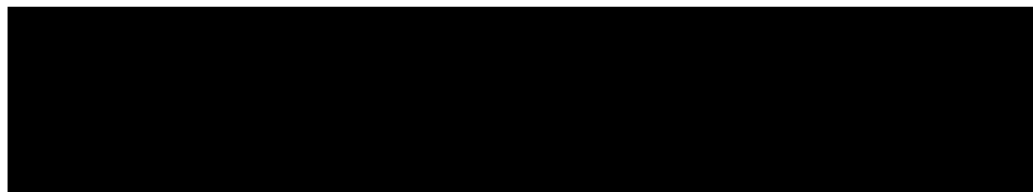
**9. SUPPLIERS RESPONSE – DELIVERY OF A SUPPORT FUNCTION**

**9.1. CUSTOMER CHARTER**

9.1.1.



9.1.2.



9.1.3.



Name	Position	Responsibilities

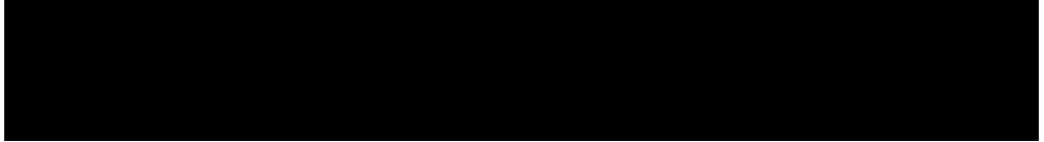


## 9.2. SUPPORT DURING OPERATIONAL HOURS

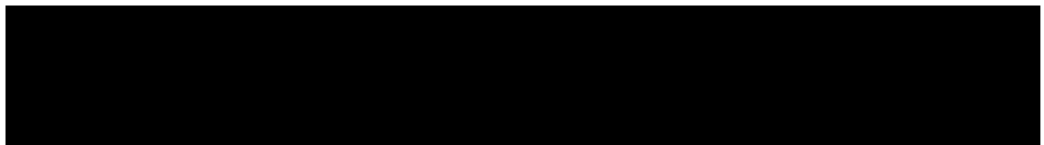
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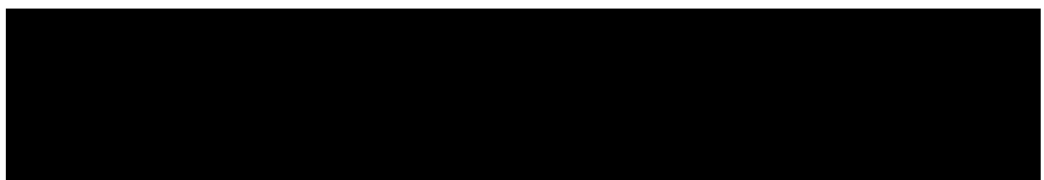
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9.2.3.



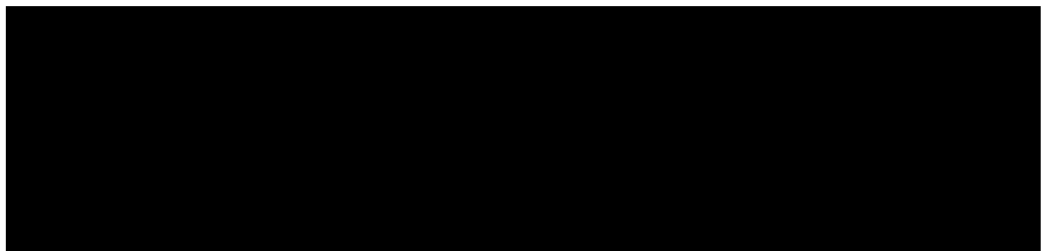
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9.2.5.



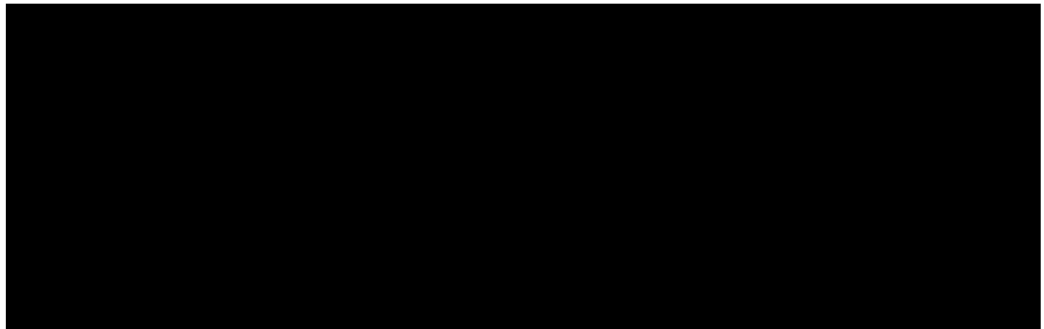
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9.2.7.



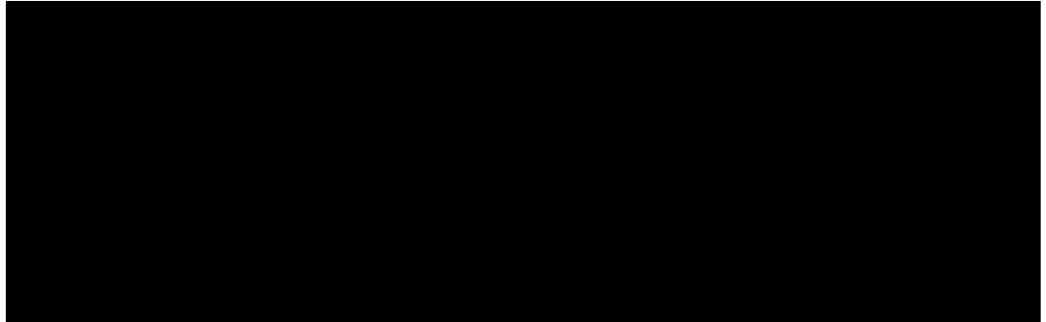
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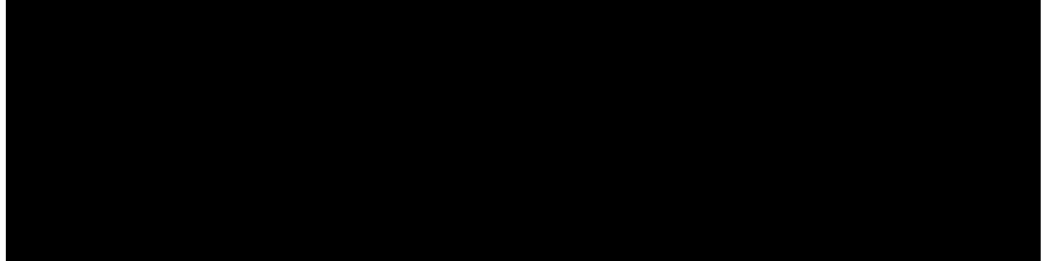
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9.2.10.



9.2.11.



9.2.12.

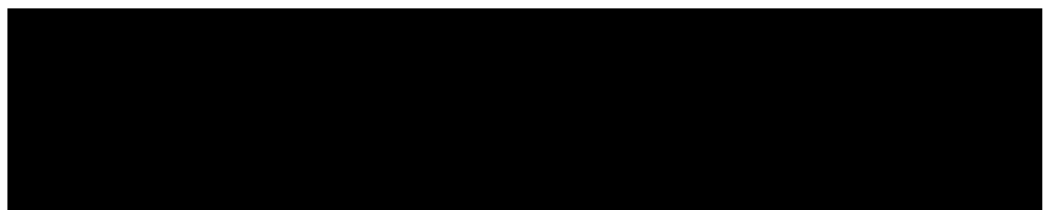


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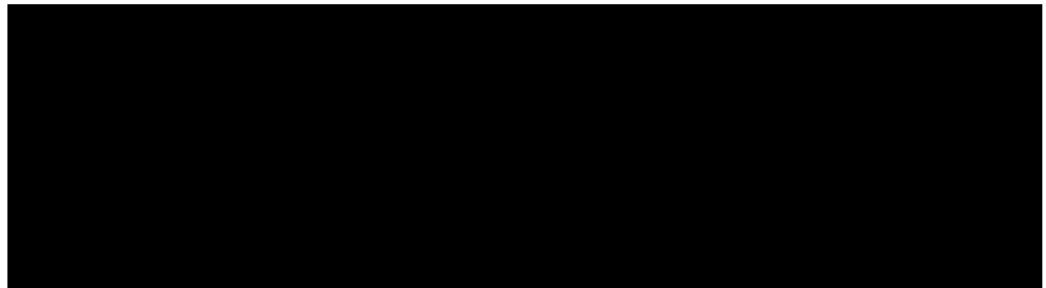


### **9.3. OUT OF HOURS SERVICE**

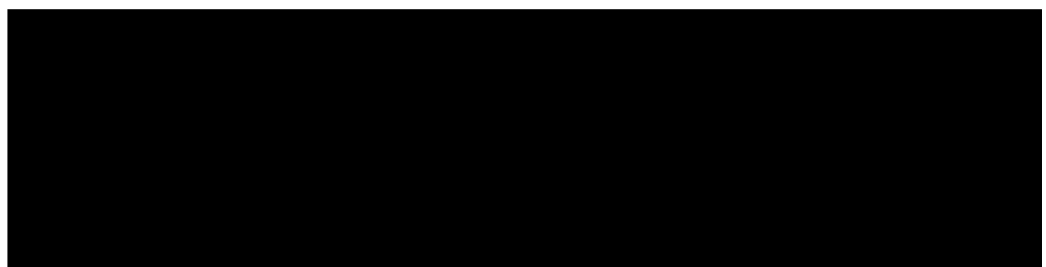
9.3.1.



9.3.2.



9.3.3.

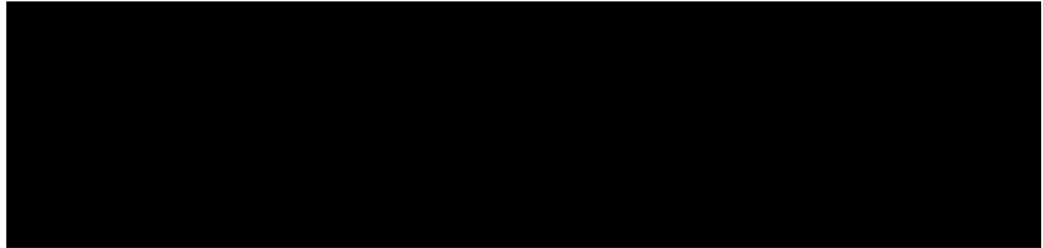


#### **9.4. MANAGEMENT INFORMATION**

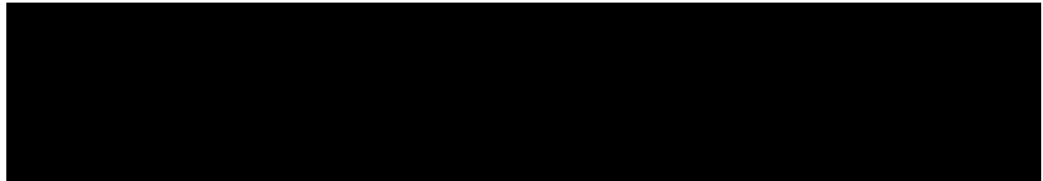
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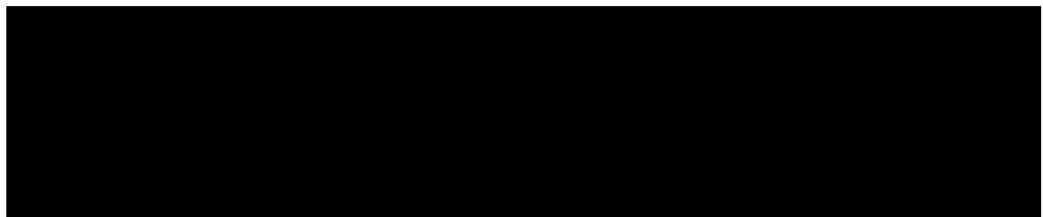
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9.4.3.



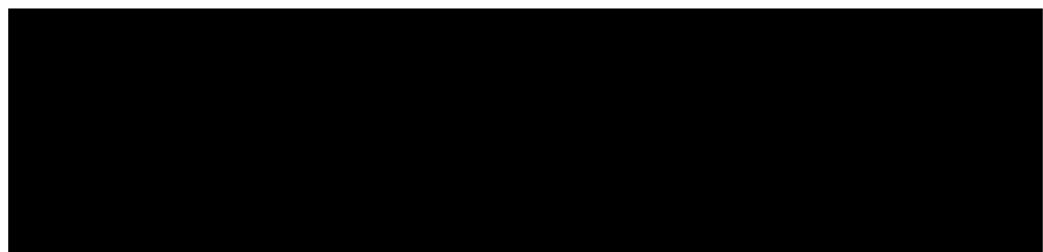
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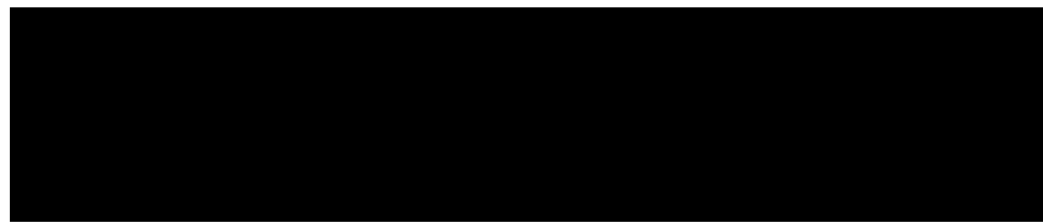
#### **10. SUPPLIERS RESPONSE – APPROACH TO A NOT FOUND PROCESS**

##### **10.1. NOT FOUND**

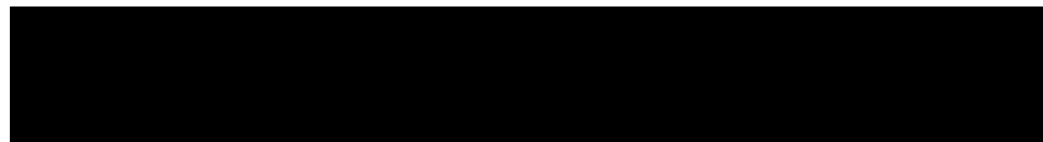
10.1.1.



10.1.2.



10.1.3.



10.1.4.



10.1.5.

[REDACTED]

10.1.6.

[REDACTED]

10.1.7.

[REDACTED]

10.1.8.

[REDACTED]

**10.2. Customer sent in items that we have not got on O'Neil**

10.2.1.

[REDACTED]

10.2.2.

[REDACTED]

10.2.3.

[REDACTED]

10.2.4.

[REDACTED]

10.2.5.

[REDACTED]

10.2.6.

[REDACTED]

**10.3. Restore have sent out an item that the customer has not received**

10.3.1.

[REDACTED]

10.3.2.

[REDACTED]

10.3.3.

[REDACTED]

10.3.4.

[REDACTED]

- 10.3.5. [REDACTED]
- 10.3.6. [REDACTED]
- 10.3.7. [REDACTED]
- 10.3.8. [REDACTED]
- 10.3.9. [REDACTED]
- 10.3.10. [REDACTED]

## **11.SUPPLIERS RESPONSE – SECURE DESTRUCTION AND CONFIDENTIAL WASTE**

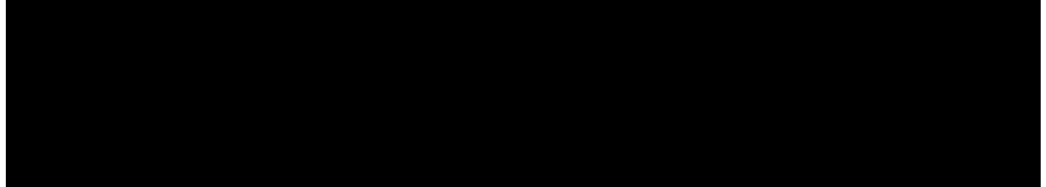
### **11.1.DESTRUCTION SERVICES**

- 11.1.1. [REDACTED]
- 11.1.2. [REDACTED]
- 11.1.3. [REDACTED]
- 11.1.4. [REDACTED]
- 11.1.5. [REDACTED]

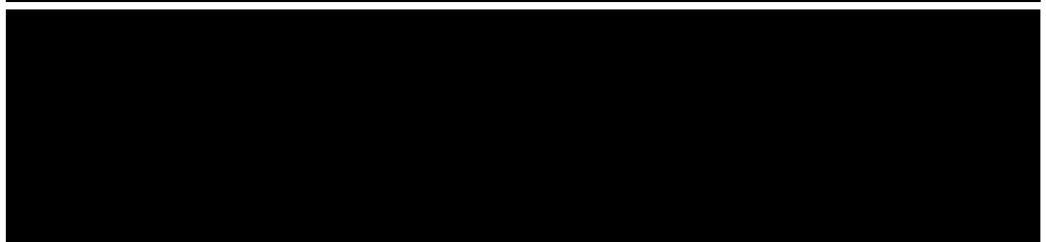
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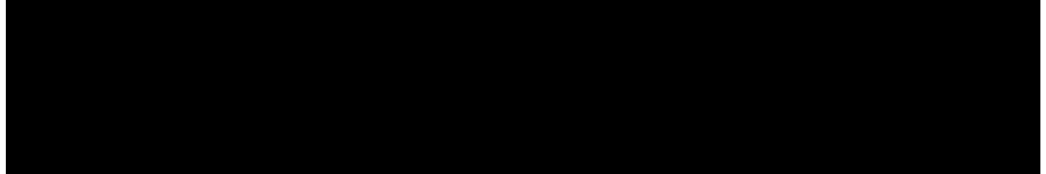
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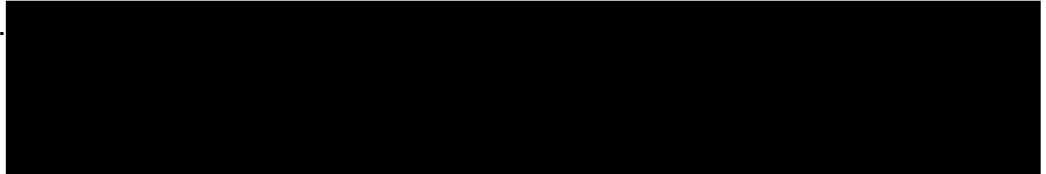
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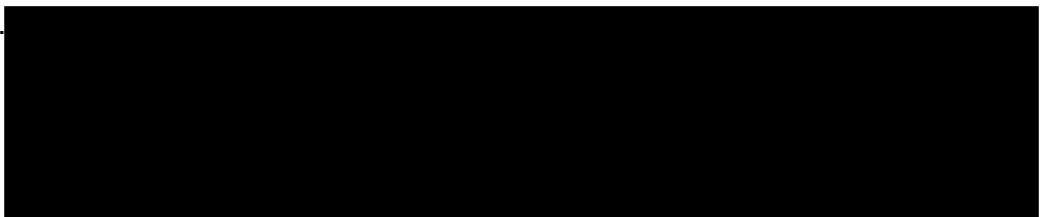
11.1.9.



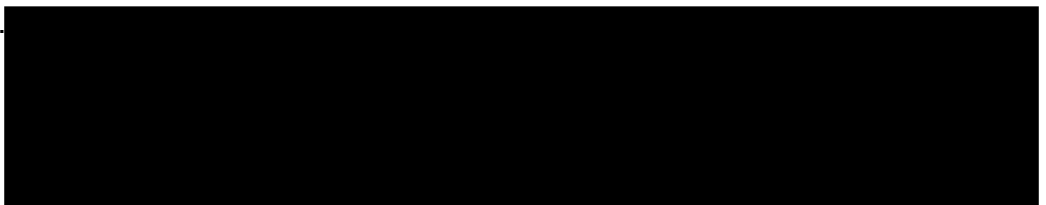
11.1.10.



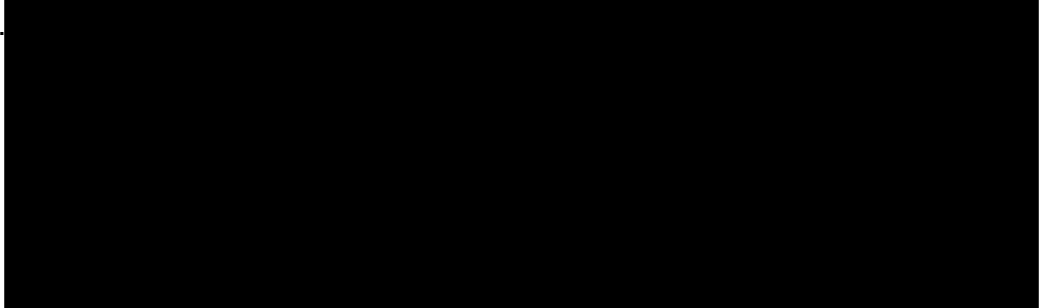
11.1.11.



11.1.12.



11.1.13.



## 11.2. ACCURACY OF THE PROCESS

11.2.1.

11.2.2.

11.2.3.

11.2.4.

11.2.5.

11.2.6.

11.2.7.

11.2.8.

11.2.9.

11.2.10.

11.2.11.

11.2.12.

## **Part B – Implementation Plan**

Please see MCD Annex 1 - Implementation Plan



## Part C – Key Personnel

Supplier		
Key Role	Name of Key Personnel	Contact Details

Authority		
Key Role	Name and Job Title	Contact Details

## **SCHEDULE 2 – ADMINISTRATION REQUIREMENTS**

### **1. Authority's Authorisation**

1.1. The following person is the Authority's Representative and is authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract.

1.2. Contact details are shown in clause A5.3.

Name: Jayne Haworth

Title: Authority's Representative

Tel: [REDACTED]

Email: [REDACTED]

1.3. The Authority's Representative may approve deputy Authority's Representatives to exercise on his/her behalf such powers as are contained in this Contract.

### **2. Suppliers Authorisation**

2.1. The following person is the Suppliers Representative and is authorised to act on behalf of the Supplier on all matters relating to the Contract.

Name: Nigel Dews

Title: Suppliers Representative

Tel: [REDACTED]

Email: [REDACTED]

### **3. Payment Information**

3.1. The Authority and the Contractor shall exchange all orders, invoices, claims and payments via electronic methods. The Contractor shall submit invoices to the Authority in accordance with the procedures set out in Appendix A - Invoicing Procedure Supplier Adoption Pack.

3.2. No invoice will be paid unless it has been verified against the MI provided as supporting evidence, which will provide assurance to the Authority that costs are claimed against actual delivery.

3.3. The Authority and the Contractor shall, prior to the submission of the first invoice, agree in good faith the format, content and supporting evidence required, to be adopted in respect of invoices. The invoice shall include as a minimum:

- the Contract reference number;
- the name and address of the Contractor;
- the Contractor's VAT number;
- an itemised description of the services being invoiced against the unit cost model;
- the quantity of goods or extent of services;
- any service credits being applied;
- the rate of VAT being applied;

- VAT charged for each service;
- the total charge excluding VAT;
- the total VAT, and
- the overall total

#### **4. Disputed Claims**

- 4.1. Notwithstanding paragraph 4.5 of this Schedule, payment by the Authority of all or any part of any Contract Price rendered or other claim for payment by the Supplier shall not signify approval. The Authority reserves the right to verify Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.
- 4.2. If any part of a claim rendered by the Supplier is disputed or subject to question by the Authority, either before or after payment, then the Authority may call for the Supplier to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question. The Supplier shall promptly provide such evidence in a form satisfactory to the Authority.
- 4.3. If any part of a claim rendered by the Supplier is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.
- 4.4. If any fee rendered by the Supplier is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable, then the Supplier shall forthwith repay such part to the Authority.
- 4.5. The Authority shall be entitled to deduct from sums due to the Supplier, by way of set-off, any amounts owed to it or which are in dispute or subject to question, either in respect of the fee for which payment is being made or any previous fee.

#### **5. Final Claims**

- 5.1. Provided all previous claims have been paid, the Authority shall have no further liability to make payment of any kind to the Supplier once the final claims have been paid.

**Appendix A – Invoicing Procedure Supplier Adoption Pack.**

Please see MCD Annex 2 - Supplier Adoption Pack

### **SCHEDULE 3 – MONITORING REQUIREMENTS**

This Schedule 3 sets out the Contract management requirements which are applicable to the delivery of the Services.

#### **1. Reviewing Contract Performance**

- 1.1. The Supplier shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered as specified.
- 1.2. The Supplier shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Supplier's management and delivery of it.
- 1.3. The Supplier shall supply information requested relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority in this Schedule 3.
- 1.4. The Authority intends, wherever it can, to capture and collate information through its Authority's Systems Environment. However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.
- 1.5. Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.
- 1.6. Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule 3.
- 1.7. Review meetings between the Authority and the Supplier shall also cover, as appropriate, dispute resolution and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.8. The Authority may undertake spot checks at any time to ensure that the Supplier is complying with its obligations under this Contract and the Supplier shall co-operate fully, at its own cost, with the Authority.
- 1.9. The Authority shall, throughout the Contract Period, monitor and review the applicability of the performance criterion defined in Appendix B of this Schedule 3. Any amendments to the performance criterion shall be by mutual agreement.
- 1.10. The Supplier will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, including feedback to and from customers and stakeholders; change control procedures and the prompt resolution of any

problems. The Authority will agree with the Supplier day-to-day relationship management, contact points, communication flows and escalation procedures.

## 2. Access


2.1. In all instances, the Supplier shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring in relation to the Contract. Failure to provide such reasonable assistance shall be deemed a "Default" for the purposes of clause H2 (Termination on Default).

## 3. Health and Safety Responsibilities of the Authority's Representatives

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

## 4. Management Information

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

Report Name	Report Content	Format	Frequency
Transactional MI	 Records Management MI Pack  MI against all the Transactional Charges in the Contract on a minimum of a Monthly basis.  Full content to be finalised during the Implementation Period.	Excel	Monthly (on or before the 7 <sup>th</sup> )

Report Name	Report Content	Format	Frequency
Invoice MI	<p>Validate invoice submission and provide running total of service spend against purchase order value</p> <p>Full content to be finalised during the Implementation Period.</p>	Excel	Monthly (on or before the 7 <sup>th</sup> )
Dashboard	<p>The Supplier shall provide the Contracting Authority with a dashboard report which presents key contract information.</p> <p>Full content to be finalised during the Implementation Period.</p>	Excel	Monthly (on or before the 7 <sup>th</sup> )
Highlight Report	<p>The Supplier shall provide a Highlight Report on a Monthly basis.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )
RM System	<p>The Supplier shall provide Management Information regarding the Record Management System on a Monthly basis.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )
Maintenance Report	<p>The Supplier shall provide Management Information on all maintenance activity including data on all Damaged Boxes and Records which are receipted into the File Store and subsequently replaced; the MI will also include information on the DWP site which sent the Box or Record into the File Store on a monthly basis.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )

Report Name	Report Content	Format	Frequency
DRO Report	<p>The Supplier shall provide a report to the DRO on a weekly basis regarding how many Review 1 and Review 2 files have been indexed</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )
Project Progress Reports	<p>The Supplier shall provide the Contracting Authority with a monthly project progress report, detailing all actions that have been carried out.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )
Not Found activity	<p>The Supplier shall provide the Contracting Authority with a monthly Not Found activity report, detailing all actions that have been carried out.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Monthly (on or before the 7 <sup>th</sup> )
Asset Report	<p>The Supplier shall provide the Contracting Authority with an updated Asset List, detailing the current status of all assets on a quarterly basis.</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation	Quarterly (on or before the 1 <sup>st</sup> )
Audit Progress Report	<p>TBA</p> <p>Full content to be finalised during the Implementation Period.</p>	To be Agreed with Supplier at implementation and on a monthly basis thereafter.	Monthly (on or before the 7 <sup>th</sup> )



## Appendix A – Contract Performance Targets – Key Performance Indicators

Key Performance Indicators
Intake
Item Intake (including Returns) is Put Away within 24hrs of Receipt so it is available if required by the Authority.
Corporate Records and Registered Files Intake is Indexed and Put Away within 24hrs of Receipt so it is available if required by the Authority.
Non - Conformant Items are returned to the relevant Business Area on the same day so the error can be rectified by the Authority.
Damaged boxes or File Covers are replaced prior to being Put Away to prevent any further Damage.
Retrieval
Items requested for Retrieval are made available for collection the day after the request was received so that the Item is sent to the Authority in a timely manner
An Urgent Priority Retrieval requested by 13:00 is made available for collection on the same day so that the Item is sent to the Authority in a timely manner
Destruction
Items are prepared for Destruction within 30 calendar days of their Destruction date.
Corporate Records and Registered Files are prepared for Destruction within 30 calendar days of instruction from the DRO Team.
Archived electronic Item history and Data are held in accordance with Authority's instruction and the Authority Retention Policy and any obligations it has under Data Protection legislation
Records Management (RM) System
The RM System is available and accessible to all Users 100% of the time during the Authority's Operational Hours.
Requests for Retrieval made during unscheduled times when the RM system is unavailable should be recorded on the RM System within three (3) hours of the RM System becoming available again so it can be tracked on the system by the Authority.
Where RM System issues or incidents occur an action plan outlining, as a minimum, a timeframe for resolving the issue or incident is issued to the Authority is required within three (3) hours of the Supplier being notified of the issue or incident;
Boxes and Barcodes
Boxes and Barcodes stock levels are adequate to ensure the Authority can deliver the service.
Boxes and Barcodes are received by the Authority from the Supplier in a timely manner.
Item Maintenance

<b>Key Performance Indicators</b>
Damaged boxes and File Covers are replaced to prevent further Damage except where the Damage relates to Corporate Records or Registered Files.
<b>Space Creation</b>
Any space created in File Store should be consolidated to ensure smallest footprint at all times.
<b>Bulk Projects</b>
Bulk Project instructions are acknowledged within 24hrs by the Supplier so that the Authority knows instructions have been received and understood.
Bulk Project proposals shall be received within 7 days of the instruction being received to prevent delays to any project planning and delivery.
<b>Data Upload/Download</b>
The RM system will be amended within 24hrs of the request to ensure the data is available to the Authority
Data received via secure PGP Encrypted E-mail will be uploaded within 24hrs of Receipt to ensure the Data is available to the Authority
Data received via USB Memory stick will be uploaded within 24hrs of Receipt to ensure the Data is available to the Authority
<b>Indexing</b>
Non indexed Items will be Indexed and Put Away within 24hrs of Receipt so it is available if required by the Authority
<b>Not Founds</b>
Not Found Items will be reported to the Authority so next steps can be planned and reported.
An investigation report will be provided so the Authority understands what measures the Supplier has taken to locate the Not Found Item.
<b>Audit</b>
Key performance Indicators will be agreed between Authority and Supplier no later than 2 months' prior to Audit commencement

## **Appendix B – Contract Performance Targets – Service Level Agreements**

1. In delivering the Services the Supplier acknowledges that it is under an obligation to meet the Key Performance Indicators and Service Level Agreements. Furthermore, that failure to meet all or any of the specified Service Level Agreements, shall entitle the Authority to exercise its rights under clause F5 and seek compensation (Service Credits) as per Schedule 4 (Contract Price).
2. Critical Service Level Failure occurs when the Supplier fails to achieve any individual Service Level Performance Criterion listed in three (3) consecutive Service Periods, any four (4) Service Level Performance Criterion listed in two (2) consecutive Service Periods, or any six (6) Service Level Performance Criterion listed in any individual Service Period.

3. The following Service Levels shall apply to this Contract: -

Ref.	Service Level Performance Criterion	Service Level Performance Measure	Service Level Threshold	Service Credit for each Service Period	Critical Service Level failure Y/N
<b>Intake</b>					
1	<b>Item Intake - Indexed and Non-Indexed (includes Returns)</b> The Supplier shall ensure that all Items received into File Store are individually Receipted (within 6hrs), Indexed where required, Put Away in a Unique Location and entered into the RM System within 24hrs of Receipt by the Supplier.	100% at all times	Less than 97%	£50 per 300 Items (up to a maximum of £200 per 1200 Items)	Y
2	<b>Intake of Corporate Records and Registered Files - Not indexed</b> The Supplier shall ensure that all Items that have not been Indexed prior to being sent into File Store are Indexed, Receipted, provided with a Barcode, Put Away in Unique Location and Entered into the RM System within 24hrs of Receipt by the Supplier. All items must be Indexed accurately in accordance with guidance provided. Any errors must be corrected within 24hrs of notification from the Authority.	100% at all times	Less than 97%	£10 per Item (up to a maximum of £30)	Y
<b>Retrieval</b>					

3	<b>Item Retrieval</b> The Supplier shall Retrieve Items from the File Store upon request of a User. The Supplier shall ensure each requested Item(s) will be made available for collection by the Courier on the day after the request was made. The Supplier shall ensure that the RM System is updated in Real Time to reflect the movement of the File during the Retrieval process.	100% at all times	Less than 97%	£1 per item (up to a maximum of £400)	Y
4	<b>Urgent Priority Retrieval</b> The Supplier shall ensure where an Item is requested for Urgent Priority Retrieval by 13:00 by a User, it is made available for collection by the Courier or Authority Representative the same day. The Supplier shall ensure that the RM System is updated in Real Time to reflect the movement of the Items during the Retrieval process.	100% at all times	Less than 100%	No Service Credits Apply	Y
<b>Destruction</b>					
5	<b>Destruction</b> The Supplier shall ensure all Items are prepared for Destruction within 30 calendar days of the scheduled Destruction date or as agreed by both parties.	100% at all times	Less than 99.5%	£1 per item (up to a maximum of £250)	Y
6	The Supplier shall ensure Corporate Records and Registered Files are Destroyed within 30 days of authorisation by the DRO Team	100% at all times	Less than 99.5%	£1 per item (up to a maximum of £250)	Y

	Archived electronic Item history and Data are held for 6 months after Destruction. Then the Supplier shall retain and store the data in an accessible format in an archive database within the RM System until the archive database is scheduled for deletion.	100% at all times	Less than 100%	No Service Credits Apply	Y
<b>Records Management (RM) System</b>					
7	<b>Record Management System Availability</b> The Supplier shall ensure the RM System is available for Authority access 100% of the time within the Authority's Operational Hours with the exception of any scheduled downtime.	100% at all times	Less than 100%	No Service Credits apply	Y
<b>Boxes and Barcodes</b>					
8	<b>Stock and dispatch</b> The Supplier shall ensure adequate stock levels of boxes and Barcodes at all times and shall ensure boxes and Barcodes are available for dispatch within 24hrs of a requested from the Authority.	100% at all times	Less than 99.5%	No Service Credits apply	N
<b>Space Creation</b>					
9	<b>Space Creation</b> During Business as Usual Activities the Supplier shall ensure boxes are consolidated as part of the process and provide the Authority with details via monthly reports.	at least 100% at all times	Less than 99.5%	No Service Credits apply	N
<b>Bulk Projects</b>					

10	<b>Bulk Projects</b> The Supplier shall both acknowledge Receipt in writing of any instruction from the Authority to undertake Bulk Projects within 24hrs and provide a proposal in writing to the Authority within 7 calendar days of instruction being Received.	100% at all times	Less than 99.5%	No Service Credits apply	N
<b>Data Upload/Download</b>					
11	<b>Updating Information on the Records Management System</b> Upon request from the Authority the Supplier shall amend all information stored on the RM System relating to an individual Item within 24hrs of the receiving the request.	100% at all times	Less than 100%	No Service Credits Apply	Y
12	<b>Data transfer and upload</b> The Supplier shall upload data to the RM System via secure PGP Encrypted E-mail or encrypted USB Memory Stick within 24hrs of the request being received by the Supplier.	100% at all times	Less than 100%	No Service Credits Apply	Y
<b>Not Founds</b>					
13	<b>Not Found Reporting</b> The Supplier shall report Items that cannot be found to the Authority within 48hrs after the request was made.	100% at all times	Less than 99.5%	No Service Credits apply	N
14	<b>Not Found Investigation</b> The Supplier shall provide the Authority with a written report detailing all measures taken to find the Item within 20 Working Days of the request being made.	100% at all times	Less than 99.5%	No Service Credits apply	N

	Audit				
15	<b>Audit MI</b> The Supplier will provide the Authority a detailed Audit plan, including Service Levels and Performance Indicators, no later than 2 months' prior to Audit Commencement	N/A	N/A	N/A	N



## **Appendix C – Performance Review Table for Contract Management**

### **1. Performance Review Table**

- 1.1. Both the Authority and the Supplier shall ensure that they are appropriately represented at each governance meeting by a suitably experienced and empowered delegate, in order to meet the objectives of that meeting.
- 1.2. Attendance at the governance meetings shall be in person but exceptionally, where agreed in advance by both the Authority and the Supplier, a delegate may participate by video-conference or by telephone.
- 1.3. The Authority and the Supplier may, by mutual agreement, invite other attendees to a governance meeting, where such attendees are Authority or Supplier employees; or employees of a sub-contractor or third party supplier. Such attendees will be subject to the same obligations of confidentiality as the appointed delegates of the Authority and the Supplier.
- 1.4. The structure for governance meetings and terms of reference are contained within the following templates:

Monthly Performance Review Board	
Required pre-meeting activities	Provision of Supplier Performance Report Review of Supplier Performance Report Provision and agreement of Agenda Arrangement of venue / meeting room Review and update of Action Points Identification of additional representatives
Chaired By	DWP Chairperson
Agenda Set By (5 days in advance of meeting)	DWP
Core Membership DWP	Operational Contract Manager Commercial Practitioner (Contract Manager or Performance Manager as specified in the contract) Commercial Lead (Optional) Other DWP nominated representative(s) as appropriate (e.g. Finance) Live Service Manager (Digital Group) – If applicable
Core Membership Supplier	Supplier Performance Manager(s) Other Supplier nominated representative(s) as appropriate (e.g. Finance)
Terms Of Reference	<ol style="list-style-type: none"> <li>1. Review of Action Point Log from previous meetings</li> <li>2. Review the Supplier Performance Report for the preceding month. May include;               <ol style="list-style-type: none"> <li>a) Supplier performance against Service Levels / KPIs</li> <li>b) Review of applicability of Service Levels / KPIs</li> <li>c) Review and agree Exceptions</li> <li>d) Service Charges and Service Credits</li> <li>e) Service Availability (non IT Incidents &amp; IT Outages)</li> <li>f) Review of Risks / Issues</li> <li>g) Analyse summary data of Incidents</li> <li>h) Changes to People / Processes during the reporting period</li> <li>i) Summary of Change Requests</li> <li>j) Volumetric Data</li> <li>k) Trend Analysis – Forecast v Actual</li> <li>l) Customer Satisfaction</li> <li>m) Supplier Performance Remediation Plans (if applicable)</li> </ol> </li> <li>3. Financial Review of Actual against Forecast expenditure               <ol style="list-style-type: none"> <li>a) Review agreed Cost Model</li> <li>b) Cost reduction measures</li> <li>c) Review forecast</li> </ol> </li> <li>4. Review of Savings opportunities</li> <li>5. Supplier Risk Review</li> </ol>
Frequency	Monthly
Location	To be confirmed

Quarterly Strategic Review Board	
Required pre-meeting activities	Supplier to draft Agenda – to be agreed by DWP
Chaired By	Chairperson (DWP Commercial Lead)
Agenda Set By (5 days in advance of meeting)	DWP Commercial Lead
Core Membership DWP	Commercial Lead Commercial Practitioner Operational Contract Management Representative(s) Finance Business Partner Other DWP nominated representative(s) as appropriate (e.g. Security) Senior Product Lead (Digital Group) – if applicable
Core Membership Supplier	Key Account Manager / Director Supplier Performance Manager(s) – if applicable Senior Commercial Manager – if applicable Other Supplier nominated representative(s) as appropriate (e.g. Finance)
Terms Of Reference	<ol style="list-style-type: none"> <li>1. Review of Action Point Log from previous Quarterly Strategic Review Board</li> <li>2. Review Quarterly Performance which may include: <ol style="list-style-type: none"> <li>a) Service Performance – SLAs, KPIs</li> <li>b) Financial Performance</li> </ol> </li> <li>3. Financial Review of Actual against Forecast expenditure <ol style="list-style-type: none"> <li>a) Review agreed Cost Model</li> <li>b) Cost reduction measures</li> <li>c) Review forecast</li> </ol> </li> <li>4. Review of Innovation and Savings Opportunities</li> <li>5. Supplier Risk Review</li> </ol>
Frequency	Quarterly
Location	Heywood File Store

<b>Annual Strategic Review Board</b>	
Required pre-meeting activities	Supplier to draft Agenda - to be agreed by DWP Provision of Senior Briefing Provision of Annual Financial Summary
Chaired By	Chairperson (Supplier Key Account Manager)
Agenda Set By (10 days in advance of meeting)	Supplier Key Account Manager
Core Membership DWP	Commercial Specialist Operational Contract Management Representative Finance Business Partner Other DWP nominated representative(s) as appropriate (e.g. Security)
Core Membership Supplier	Key Account Manager / Director Supplier Performance Manager(s) – if applicable Senior Commercial Manager – if applicable Other Supplier nominated representative(s) as appropriate (e.g. Finance)
Terms Of Reference	<ol style="list-style-type: none"> <li>1. Annual Contract Performance Overview <ol style="list-style-type: none"> <li>b) Service Performance – SLAs, KPIs</li> <li>c) Financial Performance</li> </ol> </li> <li>2. DWP Business Strategy Overview</li> <li>3. Supplier Business Strategy Overview</li> <li>4. Supplier to present financial summary using Open Book Contract Management Principles <ol style="list-style-type: none"> <li>a) Revenue profile;</li> <li>b) Profit profile;</li> <li>c) New business profile;</li> <li>d) Account standing;</li> <li>e) Supplier investment;</li> <li>f) Cost reduction measures;</li> <li>g) Financial stability</li> </ol> </li> <li>5. Innovation and Savings <ol style="list-style-type: none"> <li>a) Review year to date outcomes</li> <li>b) Present and agree future opportunities</li> </ol> </li> <li>6. Supplier Risk Review</li> </ol>
Frequency	Annual
Location	Heywood File Store

## **SCHEDULE 4 – CONTRACT PRICE**

### **1. General**

1.1. For the performance of the Services, the Supplier shall be paid the Contract Price calculated using the prices and rates entered in this Schedule 4.

Pricing Schedule			
Services	Forecast Volume (20 Months)	Unit Price (excl. VAT) (£)	Forecast Authority Cost (20 Months) (£)
Business As Usual			
BAU Intake	1,589,599		
BAU Retrieval	533,339		
BAU Destruction	822,661		
BAU Not Found Procedure	14,400		
Support Function (per Query)	1,600		
Consumables (File Barcode)	670,700		
Consumables (Box Barcode)	13,300		
Consumables (Box)	16,720		
File Audit			
File Validation and Reconciliation	27,500,000		
Destruction	13,100,000		
Retention	14,000,000		
Consolidation (per Box)	620,000		
File Record Change	200,000		
Other			
Waste Disposal (per Tonne)	4,000		
Recycling Rebate	4,000		
Indexing (per Item)	49,400		
Bulk Data Upload/Amend/Download	48		
Total Tenderers Price (excluding VAT) £			£9,382,041.84

<b>Recycling Rebate</b>	
<b>Tonnes Per Month</b>	<b>Mixed DWP Rebate per Tonne</b>
5	
10	
15	
20	
25	
30	
35	
40	
45	
50+	

Set Up and Implementation of IT Breakdown	
The costs detailed within the following table are provided for transparency purposes only and are costs that form part of the Unit Prices contained within the Pricing Schedule	
Item	Cost

2. Pricing Review

2.1. All prices shall remain fixed and firm for the duration of the Contract

3. Service Credits

3.1. Service Credits shall apply as detailed within Table 3 of Schedule 3 – Monitoring Requirements – Appendix B – Contract Performance Targets – Service Level Agreements.

## **SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION**

### **1. Information**

1.1. The Authority acknowledges that the Supplier has requested that the following information be treated as Commercially Sensitive Information;

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.

1.2. The Supplier acknowledges that circumstances may arise that require disclosure and are outside the control of the Authority, for example, due to a legal requirement including a court order.

1.3. The Authority will consult with the Supplier on any request for information, identified as Commercially Sensitive, under the FOIA.

1.4. The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.

1.5. The Authority will publish without prior consent from the Supplier all information provided by the Supplier not identified in this Schedule 5 as constituting Commercially Sensitive Information under the Authority's transparency reporting requirements provided that such disclosure satisfies the requirements of the FOIA.

1.6. The Authority reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior to publication.

## **SCHEDULE 6 – SECURITY REQUIREMENTS LEVEL 1 AND 2**

### **1. General**

- 1.1. The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Authority's security requirements as set out in the Contract which include the requirements set out in this Schedule [6] to the Contract (the "Authority's Security Requirements"). The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Supplier's Systems Environment.
- 1.2. Terms used in this Schedule 6 which are not defined below shall have the meanings given to them in clause A1 (Definitions and Interpretations) of the Contract.

### **2. Definitions**

- 2.1. In this Schedule 6, the following definitions shall apply:

<b>"Authority Personnel"</b>	shall mean all persons employed by the Authority including directors, officers, employees together with the Authority's servants, agents, consultants, contractors and suppliers but excluding the Supplier and any Sub-contractor (as applicable).
<b>"Availability Test"</b>	shall mean the activities performed by the Supplier to confirm the availability of any or all components of any relevant ICT system as specified by the Authority.
<b>"CHECK"</b>	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.
<b>"Cloud"</b>	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
<b>"Cyber Essentials Plus"</b>	shall mean the Government-backed, industry-supported scheme managed by the NCSC with higher level of security requirements to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.



**“Cyber Security Information Sharing Partnership” or “CiSP”**

shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.

**“Good Security Practice”**

shall mean:

- a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);
- b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and
- c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.

**“Information Security”**

shall mean:

- a) the protection and preservation of:
  - i) the confidentiality, integrity and availability of any Authority Assets, the Authority’s Systems Environment (or any part thereof) and the Supplier’s Systems Environment (or any part thereof);
  - ii) related properties of information including, but not limited to,

authenticity, accountability, and non-repudiation; and

- b) compliance with all Law applicable to the processing, transmission, storage and disposal of Authority Assets.

**“Information Security Manager”** shall mean the person appointed by the Supplier with the appropriate experience, authority and expertise to ensure that the Supplier complies with the Authority’s Security Requirements.

**“Information Security Management System (“ISMS”)”** shall mean the set of policies, processes and systems designed, implemented and maintained by the Supplier to manage Information Security Risk as certified by ISO/IEC 27001.

**“Information Security Questionnaire”** shall mean the Authority’s set of questions used to audit and on an ongoing basis assure the Supplier’s compliance with the Authority’s Security Requirements.

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

**ISAE 3402** shall mean the International Standard on Assurance Engagements No. 3402 (ISAE) as most recently published by the International Auditing and Assurance Standards Board or its successor entity (“**IAASB**”) or the relevant successor or replacement standard which is formally recommended by the IAASB.

**“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301”** shall mean:

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

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

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

<b>“Penetration Test”</b>	shall mean a simulated attack on any Authority Assets, the Authority’s Systems Environment (or any part thereof) or the Supplier’s Systems Environment (or any part thereof).
<b>“PCI DSS”</b>	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the <b>“PCI”</b> ).
<b>“Risk Profile”</b>	shall mean a description of any set of risks. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
<b>“Security Test”</b>	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
<b>“SSAE 16”</b>	shall mean the Statement on Standards for Attestation Engagements (SSAE) No. 16 as most recently published by the American Institute of Certified Public Accountants or its successor entity ( <b>“AICPA”</b> ) or the relevant successor or replacement standard which is formally recommended by the AICPA.
<b>“Tigerscheme”</b>	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
<b>“Vulnerability Scan”</b>	shall mean an ongoing activity to identify any potential vulnerability in any Authority Assets, the Authority’s Systems Environment (or any part thereof) or the Supplier’s Systems Environment (or any part thereof).

- 1.2 Reference to any notice to be provided by the Supplier to the Authority shall be construed as a notice to be provided by the Supplier to the Authority’s Representative.

### **3. Principles of security**

- 3.1. The Supplier shall at all times comply with the Authority’s Security Requirements and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

### **4. ISO/IEC 27001 COMPLIANCE, CERTIFICATION AND AUDIT**

- 4.1. The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to ISO/IEC 27001 (the “**ISO Certificate**”) in relation to the Services during the Contract Period. The ISO Certificate shall be provided by the Supplier to the Authority on the dates as agreed by the Parties.
- 4.2. The Supplier shall appoint:
- a. an Information Security Manager; and
  - b. a deputy Information Security Manager who shall have the appropriate experience, authority and expertise to deputise for the Information Security Manager when s/he is on leave or unavailable for any period of time.
- 4.3. The Supplier shall notify the Authority of the identity of the Information Security Manager on the Contract Commencement Date and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.
- 4.4. The Supplier shall ensure that it operates and maintains the Information Security Management System during the Contract Period and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- a. a scope statement (which covers all of the Services provided under this Contract);
  - b. a risk assessment (which shall include any risks specific to the Services);
  - c. a statement of applicability;
  - d. a risk treatment plan; and
  - e. an incident management plan
- in each case as specified by ISO/IEC 27001.
- 4.5. The Supplier shall provide the Information Security Management System to the Authority upon request within 10 Working Days from such request.
- 4.6. The Supplier shall notify the Authority of any failure to obtain an ISO Certificate or a revocation of an ISO Certificate within 2 Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain an ISO Certificate following such failure or revocation and provide such ISO Certificate within one calendar month of the initial notification of failure or revocation to the Authority or on a date agreed by the Parties. For the avoidance of doubt, any failure to obtain and/or maintain an ISO Certificate during the Contract Period after the first date on which the Supplier was required to provide the ISO Certificate in accordance with paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

4.7. The Supplier shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Authority.

4.8. Notwithstanding the provisions of paragraph 4.1 to paragraph 4.7, the Authority may, in its absolute discretion, notify the Supplier that it is not in compliance with the Authority's Security Requirements and provide details of such non-compliance. The Supplier shall, at its own expense, undertake those actions required in order to comply with the Authority's Security Requirements within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Authority's Security Requirements within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

## 5. CYBER ESSENTIALS PLUS SCHEME

5.1. The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to Cyber Essentials Plus (the "Cyber Essentials Plus Certificate") in relation to the Services during Contract Period. The Cyber Essentials Plus Certificate shall be provided by the Supplier to the Authority annually on the dates as agreed by the Parties.

5.2. The Supplier shall notify the Authority of any failure to obtain, or the revocation of, a Cyber Essentials Plus Certificate within 2 Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Plus Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Plus Certificate during the Contract Period after the first date on which the Supplier was required to provide a Cyber Essentials Plus Certificate in accordance with paragraph 5.1 (regardless of whether such failure is capable of remedy) shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

## 6. RISK MANAGEMENT

6.1. The Supplier shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the Contract Period which includes standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the Authority's Security Requirements are met (the **Risk Assessment**). The Supplier shall provide the Risk Management Policy to the Authority upon request within 10 Working Days of such request. The Authority may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Authority's Security Requirements. The Supplier shall, at its own expense, undertake those actions required in order to implement the changes required by the Authority within one calendar month of such request or on a date as agreed by the Parties.

6.2. The Supplier shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Supplier's Systems Environment or in the

threat landscape or (iii) at the request of the Authority. The Supplier shall provide the report of the Risk Assessment to the Authority, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Supplier shall notify the Authority within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.

6.3. If the Authority decides, at its absolute discretion, that any Risk Assessment does not meet the Authority's Security Requirements, the Supplier shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.

6.4. The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, co-operate with the Authority in relation to the Authority's own risk management processes regarding the Services.

6.5. For the avoidance of doubt, the Supplier shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 6. Any failure by the Supplier to comply with any requirement of this paragraph 6 (regardless of whether such failure is capable of remedy), shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

## **7. SECURITY AUDIT AND ASSURANCE**

7.1. The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Authority (the "**Information Security Questionnaire**") at least annually or at the request by the Authority. The Supplier shall provide the completed Information Security Questionnaire to the Authority within one calendar month from the date of request.

7.2. The Supplier shall conduct Security Tests to assess the Information Security of the Supplier's Systems Environment and, if requested, the Authority's Systems Environment. In relation to such Security Tests, the Supplier shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Supplier's Systems Environment or in the Authority's Systems Environment or (iii) at the request of the Authority which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Authority. The Supplier shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Supplier shall, at its own expense, undertake those actions

required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Authority in its absolute discretion.

- 7.3. The Authority shall be entitled to send the Authority's Representative to witness the conduct of any Security Test. The Supplier shall provide to the Authority notice of any Security Test at least one month prior to the relevant Security Test.
- 7.4. Where the Supplier provides code development services to the Authority, the Supplier shall comply with the Authority's Security Requirements in respect of code development within the Supplier's Systems Environment and the Authority's Systems Environment.
- 7.5. Where the Supplier provides software development services, the Supplier shall comply with the code development practices specified in the Specification or in the Authority's Security Requirements.
- 7.6. The Authority, or an agent appointed by it, may undertake Security Tests in respect of the Supplier's Systems Environment after providing advance notice to the Supplier. If any Security Test identifies any non-compliance with the Authority's Security Requirements, the Supplier shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Authority at its absolute discretion. The Supplier shall provide all such co-operation and assistance in relation to any Security Test conducted by the Authority as the Authority may reasonably require.
- 7.7. The Authority shall schedule regular security governance review meetings which the Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, attend.

## **8. PCI DSS COMPLIANCE AND CERTIFICATION**

- 8.1. Where the Supplier obtains, stores, processes or transmits payment card data, the Supplier shall comply with the PCI DSS.
- 8.2. The Supplier shall obtain and maintain up-to-date attestation of compliance certificates ("**AoC**") provided by a qualified security assessor accredited by the PCI and up-to-date reports on compliance ("**RoC**") provided by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the Contract Period. The Supplier shall provide the respective PCI Reports to the Authority upon request within 10 Working Days of such request.
- 8.3. The Supplier shall notify the Authority of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those

actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

## **9. SECURITY POLICIES AND STANDARDS**

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

## **10. CYBER SECURITY INFORMATION SHARING PARTNERSHIP**

- 10.1. The Supplier shall be a member of the Cyber Security Information Sharing Partnership during the Contract Period. The Supplier shall participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information
- 10.2. The Supplier shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Supplier's Risk Management Policy.



## **Appendix A – Authority Security Policies and Standards**

The Security Policies are published on:

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

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018  
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media (published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

## Appendix B – Security Standards

The Security Standards are published on:

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

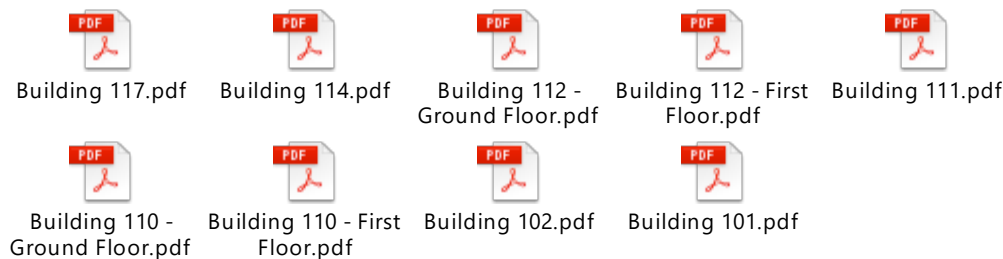
- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

## **SCHEDULE 7 – INFORMATION ABOUT THE AUTHORITY’S PREMISES**

### **1. Heywood File Store**

- 1.1. The File Store at Heywood is part of the Contracting Authority’s estates contract delivered by Telereal Trillium.
- 1.2. The location address for Heywood File Store is: Manchester Road, Heywood Lancashire OL10 2PZ.
- 1.3. The site in Heywood is delivered across 10 operational warehouse units managed and staffed by the incumbent supplier as appointed by the Authority.

### **2. Floor Plans**



### **3. Additional Buildings on Site**

- 3.1. There are also two smaller buildings on site toward the front of the site which are occupied by Authority’s personnel.
- 3.2. There is a security gate at the main entrance to the site, operated by Telereal Trillium via a sub-contracted security company.
- 3.3. Heating is provided in the units, however, there is no temperature controlling system.

### **4. Facilities Management – Security**

- 4.1. The management and associated overheads regarding the buildings and warehouses within the Heywood File Store site are covered within the facilities management costs paid by the Authority to Telereal Trillium.
- 4.2. Information relating to the physical security services provided by Telereal Trillium (e.g. CCTV coverage) at the Heywood File Store will be shared with the successful Supplier during the Implementation Period.
- 4.3. Further detailed information will be provided within the Supplier Guidance.

### **5. Licence to occupy the premises**

5.1. The licence to occupy the File Store under this Contract is as set out in Contract Clause B7.

## **6. Consumables - Current Stock**

6.1. All stock of consumable items such as flat pack boxes, pallets etc. are owned by the Authority. At Contract Commencement Date, all legacy stock will remain within the ownership of the Authority, but will be available for the Supplier to use to undertake the Service.

## **7. On Site Server Room**

7.1. Within building 118 there is a room that currently houses the server and communications equipment for the incumbent supplier. This room will be made available, if required.

## **8. Warehouse capacity**

8.1. Information regarding capacity of each warehouse is based on the current racking system and detailed in Appendix A.

## **9. Racking System**

9.1. The File Store racking system is owned by Telereal Trillium who will undertake any redesign and fitting of the racking system as may be required in the future (subject always to the provisions set out in this Contract).

## **10. Supply of Boxes**

10.1. The Authority retains the right to purchase boxes either through the pan government Office Supplies contract, independent contract(s) or via this Records Management Supplier.

## **11. Box sizes**

11.1. The Authority currently utilises Box storage as its preferred mode of storage at Heywood.

11.2. The Supplier shall supply Boxes to the Authority for use under this Contract. Requests for Boxes will be submitted to the Supplier via the RM System.

11.3. The Contracting Authority retains the right to purchase their own Boxes through alternative contractual arrangements, and the Supplier shall accept these Boxes, providing that they are of the appropriate dimensions, as set out in this Contract Schedule 7.

11.4. The measurements of the current boxes utilised are:

	<b>Length</b>	<b>Width</b>	<b>Height</b>	<b>Cubit Feet</b>
A4	400mm	280mm	280mm	1.107

<b>A5</b>	309mm	203mm	108mm	0.24
<b>Pizza Box</b>	203mm	45mm	303mm	0.1

## Appendix A – Warehouse Capacity

Warehouse Number	Area Size by Square Ft	Storage Information	Ground Floor Area by Square Metre	Mezzanine Floor Area by Square Metre	Total working area for each building	Shelved Area in Linear Metres	Shelved Area in Cubic Metres
110	55,000	The accommodation is composed of primarily Mecalux and Dexian open racking.	6030	5160	11190	19,249	23, 002
111	55,000	The accommodation is composed of primarily Mecalux and Dexian open racking. Mezzanine installations have been installed to optimised capacity.	3692	2013	5705	11,001	15,235
112	-	The accommodation is composed of primarily Mecalux and Dexian open racking.	4488	1710	6198	9,378	10,764

Warehouse Number	Area Size by Square Ft	Storage Information	Ground Floor Area by Square Metre	Mezzanine Floor Area by Square Metre	Total working area for each building	Shelved Area in Linear Metres	Shelved Area in Cubic Metres
113	40,000	The accommodation is composed of primarily Mecalux and Dexian open racking. Mezzanine installations have been installed to optimise capacity.	4095	3720	7815	16,263	19,015
114	Item audit space	The accommodation is composed of primarily Mecalux and Dexian open racking.	798	Not applicable	798	N/a	275
115	Goods In	The accommodation is composed of primarily Mecalux and Dexian open racking.	798	Not applicable	798	n/a	275
116	30,000	The accommodation is composed of primarily Mecalux and Dexian open racking. Currently used as storage for flat pack boxes	798	Not applicable	798	n/a	275

Warehouse Number	Area Size by Square Ft	Storage Information	Ground Floor Area by Square Metre	Mezzanine Floor Area by Square Metre	Total working area for each building	Shelved Area in Linear Metres	Shelved Area in Cubic Metres
117	30,000	The accommodation is composed of primarily Mecalux and Dexian open racking.	2790	Not applicable	2790	5,148	7,229
118	-	The accommodation is composed of primarily Mecalux and Dexian open racking.	2790	Not applicable	2790	5,148	7,229
119	-	The accommodation is composed of primarily Mecalux and Dexian open racking.	2300	1512	3812	5,146	7,840
Security Lodge			418	418	418	n/a	n/a
1712			4488	4488	4488	n/a	n/a
1713			418	418	418	n/a	n/a
<b>Total</b>			<b>33903</b>	<b>14115</b>	<b>48018</b>	<b>71,333</b>	<b>91,139</b>



#### **SCHEDULE 8 – LIFE CHANCES**

Not Used

#### **SCHEDULE 9 – WELSH LANGUAGE SCHEME**

Not Used

#### **SCHEDULE 10 – PARENT COMPANY GUARANTEE**

Not Used

## **SCHEDULE 11 – CHANGE CONTROL PROCEDURE**

### **1. General Principles of Change Control Procedure**

- 1.1. This Schedule 11 sets out the procedure for dealing with Contract Changes and Operational Changes.
- 1.2. If either Party is in doubt about whether a change to the Contract falls within the definition of an Operational Change, it must be processed as a Contract Change.
- 1.3. For any Change Communication to be valid under this Schedule 11, it must be sent in accordance with the provisions of clause A5 (*Notices*) as if it were a notice.

### **2. Costs**

- 2.1. The Supplier shall be entitled to increase the Contract Price only if the Impact Assessment satisfies the requirement in paragraph 5.2 of the Schedule 11, that the Contract Change is not exempt from a change in Contract Price as specified in clause F3 and it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and the Authority agrees to pay such increase.
- 2.2. The Supplier shall decrease the Contract Price if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3. Any change to the Contract Price resulting from a Contract Change, whether the change will cause an increase or a decrease in the Contract Price, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.4. Each 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.

### **3. Operational Change Procedure**

- 3.1. Any Operational Changes identified by either Party to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure provided they do not: -
  - (a) involve the Authority in paying any additional Contract Price or other costs;
  - (b) have an impact on the business of the Authority;
  - (c) require a change to this Contract; or

(d) have a direct impact on use of the Services.

3.2. Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Contract Period, and which may be sent by electronic mail or by letter.

3.3. If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.

3.4. The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

3.5. The Supplier shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

#### **4. Contract Change Procedure**

4.1. Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Appendix 1 of this Schedule 11.

4.2. If the Authority issues a 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 Impact Assessment to the Authority.

4.3. If the Supplier issues the Change Request, then it shall provide an Impact Assessment to the Authority at the same time as the Change Request.

4.4. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Authority within three (3) Working Days of the date of receiving the Change Request.

4.5. Provided that sufficient information is received by the Authority to fully understand the nature of the request for clarification and the reasonable justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

#### **5. Impact Assessment**

5.1. An Impact Assessment shall be substantially in the form of Appendix 2 of this Schedule 11.

5.2. Each Impact Assessment shall be completed in good faith and shall include:

(a) details of the impact the proposed Contract Change will have on the

Services and the Supplier's ability to meet its other obligations under this Contract;

- (b) any additional changes to the terms of this Contract that will be required as a result of that impact which may include changes to: -
  - a) the Services and/or the Service Levels;
  - b) the format of Authority Data, as set out in the Services;
  - c) the Implementation Plan and any other timetable previously agreed by the Parties; and
  - d) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's Systems Environment;
- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Services which comes into force after the Contract Commencement Date;
- (e) any amendments to the Contract wording proposed in the Change Request Form;
- (f) such other information as the Authority may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

5.3. The calculation of costs for the purposes of paragraphs 5.2(g) and (h) of this Schedule 11 shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;
- (c) include evidence of the cost of any assets required for the Change; and
- (d) include details of any new Sub-contracts necessary to accomplish

the Change.

- 5.4. 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 E2 (Protection of Personal Data).
- 5.5. Subject to the provisions of paragraph 5.6 of this Schedule 11, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with paragraph 6 of this Schedule 11 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.6. If the Authority is the Receiving Party and the Authority 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 or that a Change Request or Impact Assessment contains errors, it shall notify the Supplier of this fact and detail any further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification.
- 5.7. At the Authority's discretion, the Parties may repeat the process described in paragraph 5.6 of this Schedule 11 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 6 of this Schedule 11.

## **6. Authority's Right of Approval**

- 6.1. Subject to paragraphs 5.6 and 5.7 of this Schedule 11, within fifteen (15) Working Days, or timescale agreed between both Parties, of receiving the Impact Assessment from the Supplier, the Authority 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 6.5 of this Schedule 11; or
  - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority 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.
- 6.2. No proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.5 of this Schedule 11.
- 6.3. Unless the Authority 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.

6.4. Any discussions, negotiations or other communications which may take place between the Authority 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.

6.5. If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 of this Schedule 11 and it has not been rejected by the Supplier in accordance with paragraph 7 of this Schedule 11, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 of this Schedule 11 and send them to the Supplier. The Supplier shall sign/execute as a deed (as appropriate) both copies and deliver both signed/executed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign/seal (as appropriate) both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.

## **7. Supplier's Right Of Rejection**

7.1. Following an Impact Assessment, if the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law,

7.2. then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2 of this Schedule 11.

7.3. The Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 7.1 of this Schedule 11.

## **8. Failure to Comply**

8.1. If the Supplier fails to complete an Impact Assessment, implement or successfully comply with the Contract Change by the required date, the Authority may: -

- (a) give the Supplier a further opportunity to implement or comply with the Contract Change; or
- (b) escalate any issues arising out of the failure to implement or comply with the Contract Change to the Supplier's finance director (or equivalent) under the dispute resolution procedure set out in clause 12 (Dispute Resolution).

8.2. If, despite the measures taken under paragraphs 8.1 (a) & 8.1(b) of this Schedule 11, the Supplier fails to implement or comply with the Contract Change, the

Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause 12 (Dispute Resolution).

## **9. Management Information**

- 9.1. The Parties shall update the Contract to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Request and annotate with a reference to the Change Authorisation Note or Operational Change Request pursuant to which the relevant Contract Changes or Operational Changes were agreed.

## Appendix 1 – Change Request Form

**(For Completion by the Party Requesting Change)**

Change Request No:	Contract Title & Contract Number:	Supplier Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Full Description of Requested Contract Change (including proposed changes to wording of the Contract):		
Reasons for and Benefits of Requested Contract Change:		
Name of Owner Requesting Change:		
Signature of Owner Requesting Change:		
Date of Signature:		
<b>(For Completion by Party Receiving Request for Change)</b> Disadvantages of Requested Contract Change, if any:		
Details of any proposed alternative scenarios, if any;		
Authorisation to Complete Impact Assessment: (Name)		
Impact Assessment Assigned to: (Name)		
Impact Assessment Assigned on: (Date)		



## Appendix 2 – Impact Assessment

(For Completion by Supplier)

Change Request No:	Contract Title & Contract Number:	Supplier Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Full Details of the Impact the proposed Contract Change will have on the services and your ability to meet your other obligations under this Contract:		
Any additional changes to this Contract that will be required as a result of the change – including any:  1.Service/Service Levels/Performance Levels 2.Format of Authority Data 3.Timetable for the Implementation, including testing 4.Amendments to contract wording 5.Cost of implementing the change – ongoing/increase/decrease in costs 6.Alteration in Resources – estimated volumes and applicable rates		
Impact Assessment Completed by: (Name & Position in Organisation)		
(For Completion by Authority) Impact Assessment Approved by: (Name & Date)		
Impact Assessment Rejected by: (Name & Date)		
Reason for Rejection:		

### Appendix 3 – Change Authorisation Note


#### (For Completion by DWP)

Change Request No:	Contract Title & Contract No:	Supplier Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Detailed Description of Agreed Contract Change for which the Impact Assessment has been prepared. Provide details:		
Details of Agreed adjusted Contract Price resulting from the Contract Change for which the Impact Assessment has been prepared. Provide details:		
Amended/New Contract Wording – must include details of Cross Referencing to Original Contract Documents:		
In consideration of the rights and obligations created, granted and assumed by each Party to the other Party pursuant to this Change Authorisation Note, the Parties have agreed to enter into this Change Authorisation Note.		
The provisions of the Contract shall, save as amended in this Change Authorisation Note, continue in full force and effect, and shall be read and construed as one document with this Change Authorisation Note.		

<b>Signed on Behalf of the Authority:</b>	<b>Signed on Behalf of the Supplier:</b>
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

## **SCHEDULE 12 – PERSONAL DATA AND DATA SUBJECTS**

### **1. DATA PROCESSING**

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Schedule 12 Annex A.
3. This Schedule 12 Annex A shall be completed by the Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule 12 Annex A shall be with the Data Controller at its absolute discretion.
4. The contact details of the Data Processor's Data Protection Officer are  


## Appendix A – Data Processing

Description	Details
Identify of:  the Data Controller  the Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Supplier is the Data Processor in accordance with clause E2.2
Subject matter of the processing	Citizen information files (including personal data), e.g. Benefit claims, pension information, PIP, DLA/AA etc. Corporate files HR files Information hosted by O'Neil physical records inventory management system
Duration of the processing	For the entire Contract Period
Nature and purposes of the processing	The Supplier will process Personal Data for the purposes of providing the Services in accordance with the Contract
Type of Personal Data	Information relating to Citizens and metadata added to the RM System, including amendments. Such information would include: <ul style="list-style-type: none"> <li>• HR personnel files (containing special categories of personal data)</li> <li>• Citizen information files (containing special categories of personal data)</li> <li>• Corporate files</li> <li>• Boxes of Records and Items</li> <li>• Files</li> <li>• Documents</li> <li>• Paper</li> <li>• Forms</li> <li>• Legal documentation</li> <li>• Evidence photographs</li> <li>• Microfilm</li> <li>• Maps</li> <li>• X-Rays</li> </ul> Information relating to staff records. Such information would include:

	<ul style="list-style-type: none"> <li>• DWP staff names</li> <li>• locations</li> <li>• work email addresses</li> </ul>
Categories of Data Subject	Subjects include: staff and citizen records
Plan for return and destruction of the data once the processing is complete UNLESS requirement under European Union or European member state law to preserve that type of data	<p>All records will be stored in accordance with Authority's retention policies unless otherwise agreed within the provisions of the Contract.</p> <p>Where the Record has been completed as a destruction on the RM System the metadata is deleted from the RM System without undue delay.</p> <p>At the end of the Contract Period any data requiring migration to the Authority, the Supplier will delete back up data in line with the Contract.</p>

## Appendix B – Data Controller

### PART 1

The Authority shall be the Data Controller of:

All data for the purposes of the Contract
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## **SCHEDULE 13 – STAFF TRANSFER**

### **1. DEFINITIONS**

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

<b>“Admission Agreement”</b>	has the meaning set out in Part D of this Schedule.
<b>“Employment Regulations”</b>	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;
<b>“Former Supplier”</b>	a supplier supplying services to the Authority 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);
<b>“Losses”</b>	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;
<b>“New Fair Deal”</b>	<p>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:</p> <ul style="list-style-type: none"><li>(a) any amendments to that document immediately prior to the Relevant Transfer Date;</li><li>(b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;</li></ul>
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Old Fair Deal”</b>	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the

supplementary guidance "*Fair Deal for staff pensions: Procurement of Bulk Transfer Agreements and Related Issues*" issued in June 2004;

<b>"Replacement Services"</b>	Any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this agreement, whether those services are provided by the Authority internally and/or by any third party;
<b>"Replacement Sub-contractor"</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>"Replacement Supplier"</b>	Any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	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;
<b>"Service Transfer"</b>	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;
<b>"Service Transfer Date"</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>"Staffing Information"</b>	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 E2 ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
<b>“Statutory Schemes”</b>	means the CSPA, NHSPA or LGPS as defined in the Annexes to Part D of this Schedule;
<b>“Supplier's Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Supplier's Provisional Supplier Personnel List”</b>	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;
<b>“Transferring Authority Employees”</b>	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Supplier Employees”</b>	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
<b>“Transferring Supplier Employees”</b>	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. INTERPRETATION

- 2.1. Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.



**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF  
SERVICES – NOT USED**

## **PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1. RELEVANT TRANSFERS**

1.1. The Authority 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 Authority 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 Authority 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 Authority 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 Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - (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 Authority and, where required by the Authority, 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 Authority, 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 Authority 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 part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
  - (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 Authority and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer 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 Authority 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 Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority 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 Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (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 Agreement 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**

- 4.1. The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority 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 Authority 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**

- 6.1. Notwithstanding any other provisions of this Part B, where in this Part B the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority 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 –  
NOT USED**

## PART D: PENSIONS

### 1. DEFINITIONS

- 1.1. In this Part D and Part E, the following words have the following meanings and they shall supplement the definitions contained in the General Provisions, and shall be deemed to include the definitions set out in the Annexes to this Part D:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
<b>"Best Value Direction"</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>	<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 <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPA"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>	has the meaning in Annex D2 to this Part D;
<b>"Fair Deal Eligible Employees"</b>	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);
<b>"Fair Deal Employees"</b>	<p>any of:</p> <ul style="list-style-type: none"> <li>(a) Transferring Authority Employees;</li> <li>(b) Transferring Former Supplier Employees; and/or</li> <li>(c) employees who are not Transferring Authority 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 2.5 of Parts A Or B or paragraph 1.4 of Part C;</li> <li>(d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)</li> <li>(e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part Das notified by the Authority;</li> </ul>
<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the scheme as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D; and
<b>"Operational Services Commencement Date"</b>	has the same meaning as Activity Commencement Date, as defined in Clause A ( <i>General Provisions</i> )

## 2. PARTICIPATION

- 2.1. In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPA 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 Agreement 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 Agreement 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 Authority.

### **3. PROVISION OF INFORMATION**

- 3.1. The Supplier undertakes to the Authority:
- (a) to provide all information which the Authority 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 Authority (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 Authority, 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 Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- (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 Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
  - (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 Clauses G (Liabilities).

## 5. DISPUTES

5.1. The dispute resolution procedure in clause I will not apply to any dispute (i) between the Authority 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 Authority 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 Authority and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

- 5.2. 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. Notwithstanding any other provisions of this Contract, the Parties agree 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 Authority should it breach any obligations it has under this Part D and agrees that the Authority 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 Authority 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 Authority as far as reasonably practicable in advance of the transfer to allow the Authority 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 co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority 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 Authority.
- 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 Authority);
  - (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 Authority); and
  - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 10.3. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- (a) supply to the Authority 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 Authority (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 Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:

- (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 Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority 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 Authority.
- 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 Authority);
  - (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 Authority); and
  - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 11.3. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):
  - (a) supply to the Authority 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 Authority, 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 Authority (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 Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable

pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this paragraph.

## **12. RIGHT OF SET-OFF**

12.1. The Authority shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:

- (a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;
- (b) 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
- (c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement 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 Authority 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 Authority as result of Paragraphs 12.1 above.

## **ANNEX D1: CSPA**

### **1. DEFINITIONS**

- 1.1. In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings:

<b>"CSPA Admission Agreement"</b>	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;
<b>"CSPA Eligible Employee"</b>	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 Agreement;
<b>"CSPA Fair Deal Employee"</b>	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;
<b>"CSPA"</b>	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 Agreement 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 Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 11 of Part D.

## ANNEX D2: NHSPS

### 1. DEFINITIONS

- 1.1. In this D2: NHSPS to Part D: Pensions, the following words have the following meanings:

**"Direction Letter/Determination"** an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;

**"NHS Broadly Comparable Employees"** means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (f) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (g) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

**"NHSPS Eligible Employees"**

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

**"NHSPS Fair Deal Employees"**

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (h) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (i) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter/Determination or other NHSPS "access" facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee;

**"NHS Body"**

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

## **2. MEMBERSHIP OF THE NHSPS**

- 2.1. In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility



for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.

- 2.2. Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
  - (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3. The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4. The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5. The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6. Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7. The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. NHS PREMATURE RETIREMENT RIGHTS**

- 3.1. From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.

#### **4. NHS BROADLY COMPARABLE EMPLOYEES**

- 4.1. The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph 5.2 below.

#### **5. BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)**

- 5.1. The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
- 5.2. If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D.

#### **6. COMPENSATION**

- 6.1. If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

(a) the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

(b) a Broadly Comparable pension scheme,

the Authority may in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2. This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under paragraph 7 (Breach) of Part D of this Schedule.

#### **7. SUPPLIER INDEMNITIES**

- 7.1. The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature

Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

## **ANNEX D3: LGPS**

### **1. DEFINITIONS**

- 1.1. In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings:

<b>"2013 Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Authority"</b>	in relation to <b>the Fund [insert name]</b> , the relevant administering authority of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of the Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>
<b>["Initial Contribution Rate"]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<b>"LGPS Fair Deal Employees"</b>	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
<b>"LGPS Regulations"</b>	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings

and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## **2. SUPPLIER TO BECOME AN LGPS ADMISSION BODY**

- 2.1. In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Sub-contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

### **OPTION 1**

[Any LGPS Fair Deal Employees who:

- (a) were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- (b) were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

### **OPTION 2**

[Any LGPS Fair Deal Employees whether:

- (a) active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- (b) eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.2. The Supplier will (and will procure that its Sub-contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

## **3. BROADLY COMPARABLE SCHEME**

- 3.1. If the Supplier and/or any of its Sub-contractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.
- 3.2. If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.

#### **4. DISCRETIONARY BENEFITS**

- 4.1. Where the Supplier and/or any of its Sub-contractors is an LGPS Admission Body, the Supplier shall (and procure that its Sub-contractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

#### **5. LGPS RISK SHARING**

- 5.1. Subject to paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "Excess Amount") shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.
- 5.2. Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Authority an amount equal to A–B (the "Refund Amount") where:
  - A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
  - B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.
- 5.3. Subject to paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS

Admission Agreement ceases to have effect and the Supplier or any Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "Exit Payment"), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.

5.4. The Supplier and any Sub-contractors shall at all times be responsible for the following costs:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- (b) any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- (c) any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- (d) any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- (f) any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
- (g) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- (h) any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;

- (i) the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or
  - (j) any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5. For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Sub-contractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6. Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "Exit Credit"), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7. The Supplier shall (or procure that the Sub-contractor shall) notify the Authority in writing within twenty (20) Working Days:
- (a) of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
  - (b) of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8. Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Authority shall either:
- (a) notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
  - (c) request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9. Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority are unable to agree the amount of the



Excess Amount, Refund Amount or Exit Payment then they shall follow the dispute resolution procedure.

- 5.10. Any Excess Amount or Exit Payment agreed by the Authority or in accordance with the dispute resolution procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.
- 5.11. Any Refund Amount agreed by the Authority or in accordance with the dispute resolution procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12. This paragraph 5 shall survive termination of this Contract.

## **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 Authority 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 Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6month 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 Authority.

1.2. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority 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 Authority 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 Authority, 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 Authority (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 Authority or, at the direction of the Authority, 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 Authority any information the Authority 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 13 (*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 Authority, 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 Sub-

contractor shall provide, to the Authority or, at the direction of the Authority, 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5. If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority 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 Authority 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 Authority 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 part-time workers or fixed-term employees,  
in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (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 Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13. Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (iii) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (iv) 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 Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (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 Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS**

## **ANNEX E2: 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, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								



CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, 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 Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	OTHER		
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

## **SCHEDULE 14 – EXIT MANAGEMENT**

### **1. DEFINITIONS**

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

<b>“Assets”</b>	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
<b>“Authority Software”</b>	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
<b>“Dispute”</b>	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 Agreement directs the Parties to resolve an issue by reference to Clause I2 (Dispute Resolution);
<b>“Emergency Exit”</b>	<p>any termination of this Agreement which is a:</p> <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause H (<i>Default, Disruption and Termination</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(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 H (<i>Default, Disruption and Termination</i>); or</li><li>(c) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Ethical Wall Agreement”</b>	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2 ;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;

<b>“Exit Plan”</b>	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of this Schedule 14 ( <i>Exit Management</i> );
<b>“Financial Distress Event”</b>	is one or more of the events listed in Clause H1;
<b>“Good Industry Practice”</b>	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 Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
<b>“Net Book Value”</b>	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 Authority of the same date as this Agreement;
<b>“Open Source Software”</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>“Ordinary Exit”</b>	<p>any termination of the whole or any part of this Agreement which occurs:</p> <ul style="list-style-type: none"> <li>(d) pursuant to Clause H (<i>Default, Disruption and Termination</i>) 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</li> <li>(e) as a result of the expiry of the Initial Term or any Extension Period;</li> </ul>
<b>“Registers”</b>	the register and configuration database referred to in Paragraph 2;
<b>“Replacement Services”</b>	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

<b>“Replacement Supplier”</b>	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
<b>“Staffing Information”</b>	will have the same meaning as defined in Schedule 13 (Staff Transfer);
<b>“Supplier Software”</b>	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;
<b>“Term”</b>	has the same meaning as Contract Period;
<b>“Termination Assistance Notice”</b>	Has the meaning given in paragraph 6 of this Schedule 14;
<b>“Termination Assistance Period”</b>	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;
<b>“Termination Services”</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of this Schedule 14;
<b>“Third Party Software”</b>	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;

## 2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1. During the Term, the Supplier shall:

- (a) create and maintain a register of all 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; and
- (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 Authority 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;



collectively referred to as the Registers

- 2.2. 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 Contract Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement 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 Authority 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 Authority 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 Authority 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 Agreement; and
- (g) such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

- 3.2. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority 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 Authority 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 Authority 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 Authority.
- 3.4. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority 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 Authority may require the Supplier to enter into the Ethical Wall Agreement 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 Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

#### **5. EXIT PLAN**

- 5.1. The Supplier shall, within 3 months after the Contract Commencement Date, deliver to the Authority 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 Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
  - (b) complies with the requirements set out in Paragraph 5.2; and
  - (c) is otherwise reasonably satisfactory to the Authority.
- 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 Clause 12 (Dispute Resolution).
- 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 Authority shall require to enable the Authority 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 Agreement;
- (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 Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority'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 Authority (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 Authority and/or a Replacement Supplier for Staffing Information pursuant to Clauses B10 – B13; 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 Authority 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 Authority 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 Authority 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 Authority 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 Clause I2 (Dispute Resolution).

### **Finalisation of the Exit Plan**

- 5.6. Within 20 Working Days after service of any notice of termination pursuant to Clause H given by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority'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 Authority, then such Dispute shall be resolved in accordance with Clause I2 (Dispute Resolution). 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 Authority 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 Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of any notice of termination pursuant to Clause H. 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 4 months after the date that the Supplier ceases to provide the terminated Services.

6.2. The Authority 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 2 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 Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority 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 Authority;
- (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 Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

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 Authority, 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 Authority'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 Service Level(s), the Parties shall vary the relevant Service 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 Authority Data;
  - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - (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 Authority Data and promptly certify to the Authority that it has completed such deletion;
  - (d) return to the Authority such of the following as is in the Supplier's possession or control:
    - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
    - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
    - (iii) any parts of the Authority's Systems Environment and any other equipment which belongs to the Authority; and
    - (iv) any items that have been on-charged to the Authority, such as consumables;
  - (e) vacate the File Store unless access is required to continue to deliver the Services;
  - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement 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 Authority 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, 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 Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

## **7. SUPPLIER PERSONNEL**

- 7.1. The Authority 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 13 (Staff Transfer) shall apply.
- 7.2. 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 Authority and/or the Replacement Supplier.
- 7.3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, 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.
- 7.5. The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority 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.

## **8. CHARGES**

- 8.1. During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Contract Price 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.

- 8.2. Where the Authority 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 Contract Price (Clause C1) 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 Contract Price (Clause C1) when not stated in the Exit Plan) shall be payable.
- 8.3. 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.
- 8.4. Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority 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.

## **9. APPORTIONMENTS**

- 9.1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Equipment and any Sub-contracts shall be apportioned between the Authority 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 Authority 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.
- 9.2. Each Party shall pay (and/or the Authority 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**

1.1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:

- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
- (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 re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
- (d) delivering to the Authority 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 Authority with any problem logs which have not previously been provided to the Authority;
- (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 Authority and/or the Replacement Supplier;
- (k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority 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 Authority and/or Replacement Supplier;
- (m) making available to the Authority 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 Authority (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) Source Code – Not used;
- (q) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (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 Agreement;
- (t) in respect of the maintenance and support of the Supplier Software, providing historical performance data;
- (u) assisting in the execution of a parallel operation of the maintenance and support of the Supplier Software until the end of the Termination Assistance Period or as otherwise specified by the Authority (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 Authority in the procurement of the Replacement Services;
- (w) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (x) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (y) providing access to the Authority 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 Authority 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 Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - ii) providing for transfer to the Authority 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 Authority at the time of termination or expiry of this Agreement;
- (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 Authority 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 Authority 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 Authority and/or the Replacement Supplier.

1.4. The information which the Supplier shall provide to the Authority 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 Authority 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 Authority 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 Authority; 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 Authority access, during business hours and upon reasonable prior written notice, to the File Store 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 Authority deems reasonable; and
  - (b) the Authority 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 Agreement is dated [ ] 20[ ]

**Between**

- (1) [INSERT NAME OF AUTHORITY] (the "**Authority**") [acting on behalf of the Crown] of [insert Authority'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 Authority 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 ("**Agreement**") 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 Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority 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 Authority or of a procurement service provider acting on behalf of the Authority 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 Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority 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 Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement 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;

**"Agreement"** 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 Authority 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 Authority 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 Agreement as set out above;

**"Invitation to Tender"** or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

**"ITT Process"** means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority 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 Authority 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 Agreement;

**“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 Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority 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 Agreement.
- 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 Agreement shall not affect its construction or interpretation.

## **2. ETHICAL WALLS**

2.1. In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) 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 Authority, 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 Authority under the Contract or pursuant to an open and transparent ITT Process;
- (b) 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 Authority 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
- (c) 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:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) 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:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (i) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) 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;

- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority 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 Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3. In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority 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
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in Clause 2.3 until such time as the Authority 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 Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority 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 Authority.

- 2.6. The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) 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 Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8. The actions of the Authority 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 Authority.
- 2.9. In no event shall the Authority be liable for any bid costs incurred by:
- (a) the Counterparty or any Affiliate or Representative; or
  - (b) any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, 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:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
  - (b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3. SOLE RESPONSIBILITY**

- 3.1. It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority 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 Agreement 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 Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

### **5. ASSIGNMENT AND NOVATION**

- 5.1. Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2. The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 5.
- 5.3. A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

## **6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 6.1. A person who is not a Party to this Agreement 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 Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

## **7. TRANSPARENCY**

- 7.1. The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement 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 Agreement must be in writing.
- 8.2. The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>

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

- 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 Agreement:

	Counterparty	Authority
<b>Contact</b>	TBC	
<b>Address</b>	TBC	Commercial Directorate, Peel Park: The shell, level 2, Brunel Way, Blackpool, FY4 5ES
<b>Email</b>	TBC	

- 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 Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a

Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 9.2. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## **10. TERM**

- 10.1. Each party's obligations under this Agreement shall continue in full force and effect for period of [ ] years from the Effective Date.

## **11. GOVERNING LAW AND JURISDICTION**

- 11.1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 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 Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

## **SCHEDULE 15 – INSURANCES**

### **INSURANCE REQUIREMENTS**

#### **1. OBLIGATION TO MAINTAIN INSURANCES**

- 1.1. Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and/or maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3. The Insurances shall be taken out and maintained with insurers who are:
  - (a) of good financial standing;
  - (b) appropriately regulated;
  - (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
  - (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4. The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals’ clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

#### **2. GENERAL OBLIGATIONS**

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

### **3. FAILURE TO INSURE**

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

### **4. EVIDENCE OF INSURANCES**

- 4.1. The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

### **5. CANCELLATION**

- 5.1. Subject to Paragraph 6.2, and save where Insurances are held and managed at a Group level (for the purposes of this provision, meaning managed via Supplier's parent company), the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2. Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

### **6. INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES**

- 6.1. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2. The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3. Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or



deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: INSURANCE CLAIM NOTIFICATION**

- 1.1. Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

## **PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

### **1. Insured**

- 1.1. The Supplier

### **2. Interest**

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

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to physical property;

happening during the period of insurance (as specified in Clause G1.6) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

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

- 3.1. Not less than £2,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £5,000,000 in the aggregate per annum in respect of products and pollution liability.

### **4. Territorial limits**

- 4.1. United Kingdom

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

- 5.1. From the Contact Commencement Date for the Contact Period.

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

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

### **7. Principal exclusions**

- 7.1. War and related perils.
- 7.2. Nuclear and radioactive risks.
- 7.3. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 7.6. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**8. Maximum deductible threshold**

- 8.1. Not to exceed £ [figure to be inserted prior to Contract award] for each and every third party property damage claim (personal injury claims to be paid in full).

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

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

## **SCHEDULE 16 – TRANSFERRING EQUIPMENT**

### **1. Transferring Equipment**

- 1.1. All details of Transferring Equipment and Authority Assets can be found within MCD Annex 3 - Transferring Equipment.