

## **Award Form**

# **Vaccine Damage Payment Scheme Medical Assessments**

**21\_08\_08**

Mid-tier contract Project

Version: v1.0

Model Version: v1.0

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

<b>1.</b>	<b>Buyer</b>	NHS Business Services Authority (the Buyer).  Its principal office is: Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE15 8NY
<b>2.</b>	<b>Supplier</b>	Name: Crawford & Company Adjusters (UK) Ltd Company number 02908444  Address: The Hallmark Building, 106 Fenchurch Street, London, United Kingdom, EC3M 5JE
<b>3.</b>	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables. This opportunity was advertised in the Contract Notice in the Find a Tender Service Notice reference: 2021/S 000-028514 Published 15 November 2021
<b>4.</b>	<b>Contract reference</b>	21_08_08
<b>5.</b>	<b>Deliverables</b>	The delivery of medical assessments for the Vaccine Damage Payment Scheme, to include all vaccines which are part of the scheme, as set out on the Gov.uk website here: <a href="https://www.gov.uk/guidance/vaccine-damage-payment-eligibility">Vaccine Damage Payment: Eligibility - GOV.UK (www.gov.uk)</a> .  See Schedule 2 (Specification) for further details.
<b>6.</b>	<b>Start Date</b>	21 March 2022
<b>7.</b>	<b>End Date</b>	20 March 2027 and in the event an Extension Period is exercised by the Authority the End Date shall be 20 March 2028 or 20 March 2029.
<b>8.</b>	<b>Extension Period</b>	The contract will be awarded for an Initial Period of 5 years and may be extended at the Buyer's discretion for a period of two 12-month periods (2 years in total), up to a maximum of 7 years.

<p><b>9. Incorporated Terms</b></p> <p>(together these documents form the 'the Contract')</p>	<p>The following documents are incorporated into the Contract. If the documents conflict, the following order of precedence applies:</p> <ol style="list-style-type: none"> <li>1. This Award Form</li> <li>2. Any Special Terms (see <b>Section 10 Special Terms</b> in this Award Form)</li> <li>3. Core Terms (version 1.0)</li> <li>4. Schedule 1 (Definitions)</li> <li>5. Schedule 20 (Processing Data)</li> <li>6. The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> <li>• Schedule 2 (Specification)</li> <li>• Schedule 3 (Charges)</li> <li>• Schedule 5 (Commercially Sensitive Information)</li> <li>• Schedule 6 (Transparency Reports)</li> <li>• Schedule 7 (Staff Transfer)</li> <li>• Schedule 8 (Implementation Plan &amp; Testing)</li> <li>• Schedule 9 (Installation Works) (NOT USED)</li> <li>• Schedule 10 (Service Levels)</li> <li>• Schedule 11 (Continuous Improvement)</li> <li>• Schedule 12 (Benchmarking) (NOT USED)</li> <li>• Schedule 13 (Contract Management)</li> <li>• Schedule 14 (Business Continuity and Disaster Recovery)</li> <li>• Schedule 15 (Minimum Standards of Reliability) (NOT USED)</li> <li>• Schedule 16 (Security)</li> <li>• Schedule 17 (Clustering) (NOT USED)</li> <li>• Schedule 18 (Supply Chain Visibility) (NOT USED)</li> <li>• Schedule 19 (Cyber Essentials Scheme) (NOT USED)</li> <li>• Schedule 21 (Variation Form)</li> <li>• Schedule 22 (Insurance Requirements)</li> <li>• Schedule 23 (Guarantee) (NOT USED)</li> </ul> </li> </ol>
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		<ul style="list-style-type: none"> <li>Schedule 24 (Financial Difficulties) (NOT USED)</li> <li>Schedule 25 (Rectification Plan)</li> <li>Schedule 27 (Key Subcontractors)</li> <li>Schedule 28 (ICT Services)</li> <li>Schedule 29 (Key Supplier Staff)</li> <li>Schedule 30 (Exit Management)</li> <li>Schedule 31 (MoD Terms) (NOT USED)</li> <li>Schedule 32 (Background Checks) (NOT USED)</li> <li>Schedule 33 (Scottish Law) (NOT USED)</li> <li>Schedule 34 (Northern Ireland Law) (NOT USED)</li> <li>Schedule 35 (Lease Terms) (NOT USED)</li> <li>Schedule 26 (Corporate Social Responsibility)</li> <li>Schedule 4 (Tender) as long as any part of the Tender that offers a better commercial position for the Buyer takes precedence over the documents above</li> </ul>
10.	<b>Special Terms</b>	Special Term 1 - N/A
11	<b>Buyer's Environmental Policy</b>	<a href="https://www.nhsbsa.nhs.uk/sites/default/files/2021-09/SHEPOL%20001%20Environmental%20Policy_2.doc">https://www.nhsbsa.nhs.uk/sites/default/files/2021-09/SHEPOL%20001%20Environmental%20Policy_2.doc</a>
12	<b>Buyer's Security Requirements</b>	As set out in Schedule 16.
13	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with the social value commitments in Schedule 4 (Tender)
14	<b>Commercially Sensitive Information</b>	Supplier's Commercially Sensitive Information: Schedule 5
15	<b>Charges</b>	Charges payable on a time spent basis as detailed in Schedule 3 (Charges)
16	<b>Reimbursable expenses</b>	Recoverable as set out in Schedule 3 (Charges)
17	<b>Payment method</b>	Electronic invoices to be sent to: [REDACTED]

		Payment monthly in arrears as detailed in the Core Terms
18	<b>Service Levels</b>	<p>Service Credits will accrue in accordance with Schedule 10 (Service Levels)</p> <p>The Service Credit Cap is: 80% of Supplier Profit for each Service Period</p> <p>The Service Period is: one (1) Month</p> <p>A Critical Service Level Failure is: three (3) inadequate Service Level Failures which occurs for the same Service Level over three consecutive Service Periods; or</p> <p>five (5) inadequate Service Level Failures which occurs for the same Service Level over twelve (12) Service Periods from the Service Commencement Date</p>
19	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).
20	<b>Liability</b>	In accordance with Clause 11.1 of the Core Terms each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges
21	<b>Cyber Essentials Certification</b>	Please see Schedule 16. This is not a requirement but the Supplier may provide this as evidence of compliance with the list of controls in Part A Annex 1.
22	<b>Progress Meetings and Progress Reports</b>	<p>During the Implementation Phase:</p> <ul style="list-style-type: none"> <li>the Supplier shall attend Progress Meetings with the Buyer weekly.</li> </ul> <p>The Supplier shall provide the Buyer with Progress Reports fortnightly.</p> <p>Following the Service Commencement Date:</p> <ul style="list-style-type: none"> <li>the Supplier shall attend Progress Meetings with the Buyer on a monthly basis.</li> <li>The Supplier shall provide the Buyer with Progress Reports every month.</li> </ul>
23	<b>Supplier Contract Manager</b>	<div></div> <div></div> <div></div> <div></div>

24	<b>Supplier Authorised Representative</b>	<div></div> <div></div> <div></div> <div></div>
25	<b>Supplier Compliance Officer</b>	<div></div> <div></div> <div></div> <div></div>
26	<b>Supplier Data Protection Officer</b>	<div></div> <div></div> <div></div> <div></div> <div></div>
27.	<b>Supplier Marketing Contact</b>	To be directed via the Supplier Contract Manager
29.	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 1</b></p> <p>Name (Registered name if registered) RTW Plus Limited</p> <p>78 Alexandra Road, London, England, SW19 7LE</p> <p>Company number 11244205</p> <p>Role of Subcontractor</p> <ul style="list-style-type: none"> <li>• Design and oversight/assurance of the clinical governance framework</li> <li>• Review and approve the fully vetted panel of experts/Medical Assessors</li> </ul>

<b>30</b>	<b>Buyer Authorised Representative</b>	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
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**\*For and on behalf of the Supplier:**

**\*For and on behalf of the Buyer:**



## **Core Terms – Mid-tier**

## 1) **Definitions used in the contract**

1.1 Interpret this Contract using Schedule 1 (Definitions).

## 2) **How the contract works**

2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form). If allowed by the Regulations, the Buyer can:

- make changes to Award Form
- create new Schedules
- exclude optional template Schedules
- use Special Terms in the Award Form to add or change terms

2.2 The Contract:

- is between the Supplier and the Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Award Form

2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.4 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

2.5 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

2.6 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## 3) **What needs to be delivered**

### 3.1 **All deliverables**

3.1.1 The Supplier must provide Deliverables:

- that comply with the Specification, the Tender Response and the Contract
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
- on the dates agreed
- that comply with Law

3.1.2 In the event that a level of warranty is not specified in the Award Form, the Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

## **3.2 Services clauses**

3.2.1 Late Delivery of the Services will be a Default of the Contract.

3.2.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.

3.2.3 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

3.2.4 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.2.5 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.2.6 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4 Pricing and payments**

4.1 In exchange for the Services, the Supplier must invoice the Buyer for the Milestone Charges and the Charges as set out in the Award Form.

4.2 All Charges:

- exclude VAT, which is payable on provision of a valid VAT invoice
- include all costs connected with the Supply of Deliverables

4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.

4.4 A Supplier invoice is only valid if it includes:

- the date of the invoice;
- a unique invoice number;
- valid purchase order number as provided by the Buyer;
- the period to which the Milestone Charges relate to;
- the period to which the Charges relate;
- details of the amount being invoiced;
- any payments due in respect of achievement of a Milestone for payment of the Milestone Charges;
- the amount of any disbursements properly chargeable to the Buyer under the terms of the Order Form and Schedule 3 (Charges); and

- any VAT payable in respect of the same.

4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

4.7 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
- enter into a direct agreement with the Subcontractor or third party for the relevant item.

4.8 If the Buyer uses Clause 4.7 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

4.9 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables
- any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges

4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## **5 The buyer's obligations to the supplier**

5.1 If Supplier Non-Performance arises from a Buyer Cause:

- the Buyer cannot terminate the Contract under Clause 10.4.1;
- the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
- the Supplier is entitled to additional time (to be mutually agreed between the Buyer and Supplier) needed to make the Delivery; and
- the Supplier cannot suspend the ongoing supply of Deliverables.

5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;
- demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; or
- mitigated the impact of the Buyer Cause.

## **6 Record keeping and reporting**

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract for 7 years after the End Date, except for any Personal Data, which are dealt with under Clause 14 and Schedule 20.

6.3 The Supplier must allow the Buyer or its duly appointed Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

6.5 The Buyer shall:

- give the Supplier 10 Business Days prior written notice of such audit unless the Buyer requests an audit in response to an actual or suspected Personal Data breach in which case notice shall be served immediately;
- not use any person who is or who works for a competitor of the Supplier to exercise any rights under this Clause 6;
- require its Auditors be bound by duties of confidentiality prior to commencing an Audit; and
- require its Auditors make reasonable efforts to minimize disruption to the Supplier's business.

6.6 Without prejudice to any of the Buyer's other rights under this Contract, including but not limited to the Rectification Plan Process set out in Clause 10.4.2 to 10.4.4, if the Supplier is not providing any of the Deliverables, Milestones and/or Services, or is unable to provide them, it must immediately:

- tell the Buyer and give reasons
- propose corrective action, such proposed corrective action to be agreed by the Buyer
- provide a deadline for completing the corrective action.

6.7 The Supplier must ensure that their Clinical Framework is up to date at all times in accordance with the requirements set out in the Specification.

## **7 Supplier staff**

7.1 The Supplier Staff involved in the performance of the Contract must:

- be appropriately trained and qualified;
- be vetted using Good Industry Practice and the Security Policy;
- comply with all conduct requirements when on the Buyer's Premises;

- comply with all requirements as set out in the Specification (Schedule 2).

7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **8 Rights and protection**

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform the Contract
- the Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract
- it is not impacted by an Insolvency Event

the Services and Deliverables will conform to the Standards as set out in Schedule 2.

8.2 The warranties and representations in Clauses 2.6 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies the Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 The Buyer can terminate the Contract for breach of any warranty or indemnity

where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **9 Intellectual Property Rights (IPRs)**

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier

9.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR
- without adversely affecting the functionality or performance of the Deliverables

## **10 Ending the contract**

10.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.2 The Buyer can extend the Contract for an Extension Period as set out in the Award Form by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### **10.3 Ending the contract without a reason**

10.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier at least 90 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

#### **10.4 When the Buyer can end the Contract**

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

- there's a Supplier Insolvency Event
- there's a Default that is not corrected in line with an accepted Rectification Plan
- the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material Default of the Contract
- there's any material Default of any Joint Controller Agreement relating to the Contract
- there's a Default of Clauses 2.6, 9, 14, 15, 27, 32 or Schedule 19 (Cyber Essentials) (where applicable) relating to the Contract
- there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels)
- there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing
- there's a Variation to the Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- The Buyer discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them

10.4.2 If there is a Default, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.3 When the Buyer receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.4 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

- must give reasonable grounds for its decision



- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.5 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

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

Where the Buyer terminates the Contract under Clause 10.4.1 all of the following apply:

10.5.1 The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.5.2 The Buyer's payment obligations under the terminated Contract stop immediately.

10.5.3 Accumulated rights of the Parties are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.5.5 The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

10.5.6 The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## **10.6 When the supplier can end the contract**

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

10.6.2 If a Supplier terminates the Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated
- Clauses 10.5.4 to 10.5.7 apply

## **10.7 When subcontracts can be ended**

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4

- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer

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

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

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

10.8.3 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

10.8.3.1 reject the Variation

10.8.3.2 increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

## **11 How much you can be held responsible for**

11.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Award Form.

11.2 No Party is liable to the other for:

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

11.3 In spite of Clause 11.1, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law

11.4 In spite of Clause 11.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8, 15.1 or Schedule 7 (Staff Transfer) of the Contract.

11.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.

11.6 When calculating the Supplier's liability under Clause 11.1 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.4

11.7 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **12 Obeying the law**

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Schedule 26 (Corporate Social Responsibility).

12.2 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## **13 Insurance**

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

## **14 Data protection**

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

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

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

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

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

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

- restore the Government Data itself or using a third party

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless the Buyer is at fault.

14.8 The Supplier:

- must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it
- indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## **15 What you must keep confidential**

15.1 Each Party must:

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

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

15.4 The Buyer may disclose Confidential Information in any of the following cases:

- on a confidential basis to the employees, agents, consultants and contractors of the Buyer
- on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to
- if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information and any Information which is exempt from disclosure by Clause 16 is not Confidential Information.

15.7 The Supplier must not make any press announcement, social media announcements, or publicise the Contract or any part of them in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either. Any consent to be obtained under this Clause 15.7 must be obtained from the Buyer's Head of Communications or their equivalent (as determined by the Buyer). This consent can be withdrawn at any time in which case the Supplier must take down any publicity material, press announcements or social media announcements from various platforms as specified by the Buyer.

15.8 In accordance with Clause 15.7, the Supplier must perform its obligations under the Buyer's Media Policy, and must ensure that the Supplier Staff are aware of and adhere to the Buyer's Media Policy.

## **16 When you can share information**

16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request
- comply with any Environmental Information Regulations (EIR) request

16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

## **17 Invalid parts of the contract**

17.1 If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## **18 No other terms apply**

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

## **19 Other people's rights in the Contract**

19.1 No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20 Circumstances beyond your control**

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

- provides a Force Majeure Notice to the other Party
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

20.2 Either party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 30 days continuously.

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses
- Clause 10.5.2 to 10.5.7 applies

## **21 Relationships created by the contract**

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

## **22 Giving up contract rights**

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

## **23 Transferring responsibilities**

- 23.1 The Supplier cannot assign the Contract without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 23.3 When the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 23.4 The Supplier can terminate the Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- their name
  - the scope of their appointment
  - the duration of their appointment

## **24 Changing the contract**

- 24.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties
- 24.2 The Supplier must provide an Impact Assessment either:
- with the Variation Form, where the Supplier requests the Variation
  - within the time limits included in a Variation Form requested by the Buyer
- 24.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:
- agree that the Contract continues without the Variation
  - terminate the affected Contract, unless the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
  - refer the Dispute to be resolved using Clause 34 (Resolving Disputes)
- 24.4 The Buyer is not required to accept a Variation request made by the Supplier.
- 24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon

as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs
- of how it has affected the Supplier's costs

24.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

## **25 How to communicate about the contract**

25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

25.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.

25.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26 Dealing with claims**

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the



- Beneficiary when recovering this money  
the amount the Indemnifier paid the Beneficiary for the Claim

## **27 Preventing fraud, bribery and corruption**

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
- keep full records to show it has complied with its obligations under Clause 27 and give copies to the Buyer on request
- if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to the Contract
- suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

## **28 Equality, diversity and human rights**

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which the Buyer reasonably imposes related to equality Law

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

## **29 Health and safety**

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

- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.1 The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

## **30 Environment**

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **31 Tax**

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non- Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the

Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer
- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

### **32 Conflict of interest**

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.

32.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

### **33 Reporting a breach of the contract**

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

### **34 Resolving disputes**

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Buyer refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute
- grant interim remedies
- grant any other provisional or protective relief

34.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

### **35 Which law applies**

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

## Schedule 1 (Definitions)

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

1.3.12. where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.

1.4. In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Affected Party"</b>	the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> <li>• verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>• verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>• verify the Open Book Data;</li> <li>• verify the Supplier's and each Subcontractors' compliance with the applicable Law;</li> <li>• identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Schedule 26 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>• identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>• obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> </ul>

	<ul style="list-style-type: none"> <li>• review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> <li>• carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;</li> <li>• enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources.</li> </ul>
<b>"Auditor"</b>	<ol style="list-style-type: none"> <li>1. the Buyer's internal and external auditors;</li> <li>2. the Buyer's statutory or regulatory auditors;</li> <li>3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>4. HM Treasury or the Cabinet Office;</li> <li>5. any party formally appointed by the Buyer to carry out audit or similar review functions; and</li> <li>6. successors or assigns of any of the above;</li> </ol>
<b>"Award Form"</b>	the document outlining the Incorporated Terms and essential information required for the Contract, to be executed by the Supplier and the Buyer;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;

<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer's Media Policy"</b>	the Buyer's policy in respect of communications, publicity material, press announcements or social media announcements by the Supplier and the Supplier Staff, as provided by the Buyer to the Supplier, and as updated from time to time;
<b>"Case Assessment Documentation"</b>	the Government Data including medical records and the claimant's application (as further set out in the Specification (Schedule 2)) provided to the Supplier by the Buyer for the purpose of delivering the Services and Deliverables;
<b>"Contract"</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the Contract Period in respect of the Contract;
<b>"Central Government Body"</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>• Government Department;</li> <li>• Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>• Non-Ministerial Department; or</li> <li>• Executive Agency;</li> </ul>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Effective Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;



<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as <b>"confidential"</b> ) or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities and contract data;
<b>"Contract Period"</b>	the term of the Contract from the Effective Date until the applicable End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR;
<b>"Core Terms"</b>	the Buyer's standard terms and conditions for common goods and services which comprise one part of the Contract the full title of which is Core Terms – Mid-tier version 1.0;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:

	<ul style="list-style-type: none"> <li>• the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</li> <li>• base salary paid to the Supplier Staff; <ul style="list-style-type: none"> <li>• employer's National Insurance contributions;</li> <li>• pension contributions;</li> <li>• car allowances;</li> <li>• any other contractual employment benefits;</li> <li>• staff training;</li> <li>• work place accommodation;</li> <li>• work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li> <li>• reasonable recruitment costs, as agreed with the Buyer;</li> </ul> </li> <li>• costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</li> <li>• operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</li> <li>• Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>• Overhead;</li> <li>• financing or similar costs;</li> <li>• maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</li> <li>• taxation;</li> <li>• fines and penalties; and</li> <li>• non-cash items (including depreciation, amortisation, impairments and movements in provisions);</li> </ul>
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<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	the Deliverables which form part of the Services (including but not limited to medical assessments) that may be ordered under the Contract including the Documentation and Outcome Report (as defined in the Specification (Schedule 2));

<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"DisclosingParty"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <ul style="list-style-type: none"> <li>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>

<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract as defined in the Award Form;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	the earlier of: a) the End Date (as defined in the Award Form); or b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under clause 11.2 : 1. in the first Contract Year, the Estimated Year 1 Charges; or 2. in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or 3. after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
<b>"Expert"</b>	an expert appointed by the Supplier to support on the Services and Deliverables;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended up to a maximum of the number of years in total specified in the Award Form;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <p>acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;</p> <ol style="list-style-type: none"> <li>1. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>2. acts of a Crown Body, local government or regulatory bodies;</li> <li>3. fire, flood or any disaster; or</li> <li>4. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ol style="list-style-type: none"> <li>i. any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>ii. any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> </ol> </li> <li>5. any failure of delay caused by a lack of funds;</li> </ol>
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"General Anti-Abuse Rule"</b>	<ol style="list-style-type: none"> <li>a) the legislation in Part 5 of the Finance Act 2013 and; and</li> <li>b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</li> </ol>

<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	the data, text, drawings, diagrams, images, index of documentation or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and/ or Personal Data as set out in Schedule 20 including but not limited to Case Assessment Documentation for the purpose of VDPS and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Buyer; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract;</li> </ul>
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Incomplete Case Assessment Documentation "</b>	Case Assessment Documentation which is materially incomplete as a result of which the Supplier cannot complete the Deliverables;
<b>" Incorporated Terms"</b>	the contractual terms applicable to the Contract specified in the Award Form;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Control"</b>	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with the Award Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of the Contract specified in the Award Form;



<p><b>"Insolvency Event"</b></p>	<ul style="list-style-type: none"> <li>a) in respect of a person:</li> <li>b) 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; or</li> <li>c) 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); or</li> <li>d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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; or</li> <li>e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>f) 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; or</li> <li>g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>h) 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</li> <li>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<p><b>"Intellectual Property Rights" or "IPR"</b></p>	<ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<p><b>"Invoicing Address"</b></p>	<p>the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;</p>

<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR including any third party IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 ( <i>Processing Data</i> );
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Personnel"</b>	the individuals (if any) identified as such in the Award Form;
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	<ul style="list-style-type: none"> <li>a) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>b) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract,</li> <li>c) and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</li> </ul>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Effective Date;
<b>"Late Delivery"</b>	failure by the Supplier to deliver any of the relevant Deliverables and/or Milestones in accordance with the terms of the Contract and either; (a) the Milestones set out in Schedule 8 (Implementation Plan and Testing); or (b) the Deliverables set out in Schedule 10 (Service Levels);

<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Lots"</b>	the number of lots specified in Schedule 2 (Specification), if applicable;
<b>"Marketing Contact"</b>	shall be the person identified in the Award Form;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Charges"</b>	the price (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in Schedule 8 (Implementation Plan and Testing) for the full and proper completion of the Milestones by the Supplier in Schedule 8 (Implementation Plan and Testing);
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"New IPR"</b>	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically and exclusively for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR;</p>

<b>"Occasion of Tax Non – Compliance"</b>	<p>where:</p> <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> </ul> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>"Open Book Data"</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> <li>i) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>ii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iii) Reimbursable Expenses, if allowed under the Award Form;</li> </ul> </li> <li>c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</li> <li>e) the Supplier Profit achieved over the Contract Period and on an annual basis;</li> <li>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</li> <li>g) an explanation of the type and value of risk and contingencies</li> </ul>

	associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and h) the actual Costs profile for each Service Period;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parliament"</b>	takes its natural meaning as interpreted within by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Award Form;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Award Form;
<b>"Prohibited Acts"</b>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul>

	<p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</li> </ul> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<b>"Protective Measures"</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>a) the nature of the data to be protected</li> <li>b) harm that might result from Data Loss Event;</li> <li>c) state of technological development</li> <li>d) the cost of implementing any measures</li> </ul> <p>including but not limited to pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<b>"Recipient Party"</b>	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify it's breach using the template in Schedule 25 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> <li>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</li> </ul>
<b>"RectificationPlan Process"</b>	<p>the process set out in Clause 10.4.2 to 10.4.4 (Rectification Plan Process);</p>

<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</li> <li>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li> </ul>
<b>"the Buyer's Confidential Information"</b>	<ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and</li> </ul> <p>information derived from any of the above;</p>
<b>"Registered Medical Practitioner"</b>	a registered medical practitioner within the meaning of Schedule 1 to the Interpretation Act 1978 who will assist the Supplier in the delivery of the Services under this Contract;
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"ReminderNotice"</b>	a notice sent in accordance with Clause 10.6 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;

<b>"Replacement Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing)) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Commencement Date"</b>	the date on which the Supplier commences delivery of the Services following completion of the requirements in accordance with paragraph 11.5 of Schedule 8 (Implementation Plan and Testing);
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	medical assessment services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form which shall include the Deliverables;
<b>"ServiceTransfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;



<b>"Sites"</b>	<p>any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> <li>c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)</li> </ul>
<b>"SME"</b>	<p>an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;</p>
<b>"Special Terms"</b>	<p>any additional Clauses set out in the Award Form which shall form part of the respective Contract;</p>
<b>"Specific Change in Law"</b>	<p>a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;</p>
<b>"Specification"</b>	<p>the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;</p>
<b>"Standards"</b>	<p>any:</p> <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in Schedule 2 (Specification) including the development of a Clinical Governance Strategy (as defined in Appendix A of Schedule 2 (Specification));</li> <li>c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;</li> <li>d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
<b>"Storage Media"</b>	<p>the part of any device that is capable of storing and retrieving data;</p>

<b>"Sub-Contract"</b>	<p>any contract or agreement (or proposed contract or agreement), other than a Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>a) provides the Deliverables (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract;</li> <li>c) Information derived from any of (a) and (b) above;</li> </ul>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <ul style="list-style-type: none"> <li>a) Achieve a Milestone by its Milestone Date;</li> <li>b) provide the Services in accordance with the Service Levels; and/or</li> <li>c) comply with an obligation under the Contract;</li> </ul>

<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants, consultants, Registered Medical Practitioners and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 Supply Chain Visibility;
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
<b>" Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
<b>"Test Plan"</b>	a plan: a) for the Testing of the Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;

<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>"Transparency Information"</b>	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for – (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (ii) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
<b>"VDPS"</b>	the Vaccine Damage Payment Scheme as further set out in the following link: <a href="https://www.gov.uk/vaccine-damage-payment">https://www.gov.uk/vaccine-damage-payment</a> .
<b>"UK GDPR"</b>	the UK General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended or supplemented from time to time by UK law;
<b>"Variation"</b>	has the meaning given to it in Clause 24 (Changing the contract);
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 24 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and

<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.
<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

## **Schedule 2 (Specification)**

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

The Requirements are as per this Schedule 2 (Specification) of the Contract and are set out below. The Services are detailed in 2 sections which reflect:

- (1) Implementation Phase (linked to Schedule 8 Implementation Plan) for Services in relation to setting up the Service and to the point following testing where the Satisfaction Certificate has been awarded;
- (2) Service Delivery: The commencement of the Services from the Service Commencement Date

### **Section 1 Implementation Phase:**

#### **1. Implementation**

- 1.1. This section describes the requirements for implementation of the Services that shall be provided by the Supplier prior to the Service Commencement Date.

#### **Implementation Plan**

- 1.2. The Supplier shall:

(a) comply with Part 1 of Schedule 8 (Implementation Plan and Testing) in relation to the production, management and delivery of a detailed Implementation Plan outlining key milestones; and

- (i) escalate and resolve any issues encountered by the Supplier in complying with 1.2 (a) above; and
- (ii) solve and learn from any issues it may encounter whilst providing the Implementation Services; and
- (iii) manage any issues relating to the Supplier Staff as part of the delivery of the Services, including to ensure the training of Registered Medical Practitioners and Supplier Staff.

#### **Clinical governance strategy**

- 1.3. The Supplier shall in accordance with the Standards required by the Buyer:

- a. develop a documented Clinical Governance Strategy as described in Appendix A within 20 days of the Effective Date; and
- b. ensure the Clinical Governance Strategy is implemented, maintained and adhered to wherever relevant in its performance of the Services; and
- c. be able to evidence demonstration of its application and implementation; and

- d. ensure that the Buyer is able to view on request the Clinical Governance Strategy and if required review with the Supplier the processes in place to be assured that the Clinical Governance Strategy is robust.

### **Transfer of Data**

- 1.4. The Supplier shall ensure that any information and data required in order for the Supplier to provide the Services are in place before the Service Commencement Date.

### **Estimated initial assessment volumes**

- 1.5. The Supplier shall be responsible for providing the Service for Covid vaccine medical assessments from the Service Commencement Date.

The Supplier should include within its Implementation Plan its proposal for completing assessments on these cases within a reasonable time frame. Current volumes of assessments are 470 (as at November 2021) and are increasing by approximately 20 per week.

### **Work in progress**

- 1.6. The Centre for Health and Disability Assessment (Incumbent Supplier) to the Department of Work and Pensions (DWP) will remain responsible for handling current medical assessments excluding the Covid vaccine assessments up to October 2022.

Ahead of October 2022 the Supplier may be required as part of this Contract to complete non-Covid Medical Assessments. The Buyer will work with all parties to ensure there is an agreed transition of the Services to the new Contract and that Assessments are completed within the respective Contracts.

Subject to agreeing the transition any unresolved Work in Progress commenced by the Incumbent Supplier where decisions are outstanding will be passed over to the Supplier who would be expected to take over and complete any outstanding assessments. From October 22 onwards the Supplier would be expected to deal with all incoming new claim assessments for all vaccines permitted within the Vaccine Damage Payments Act 1979 (on average 100 per annum) in addition to new Covid vaccine assessments. The Buyer will agree a transition plan with the Supplier.

### **Satisfaction Certificate**

- 1.7. Following satisfaction of the Implementation Plan and Testing (Schedule 8) and the issuing of all required Satisfaction Certificates in the form set out in Annex 2 of Schedule 8 the Supplier shall confirm to the Buyer:

- (a) that no later than the Service Commencement Date the Supplier shall have in place all required Supplier Staff and processes in order to:
  - (i) receive and respond to medical assessment requests, queries and instructions from the Buyer; and
  - (ii) provide Advice and Outcome Reports as part of the Deliverables as required and as set out in Appendix B of this schedule (outcome Reports); and
  - (iii) provide any professional advice, information or reports required as part of the

Services to be provided under this schedule to the Buyer.

- (b) that there is an agreed plan in place for completion of all the initial Covid vaccine medical assessments.

## **Section 2 – Service Delivery**

### **2. Administration Functions**

2.1. This paragraph concerns the process of receiving, assessing and communicating advice on claims referred to the Supplier by the Buyer.

2.2. The Supplier will be provided with medical claims assessment requests and supporting medical evidence by the Buyer for assessment via a digital documentation platform. The Supplier will be expected to acknowledge receipt of the documentation to the Buyer within 1 day of receipt and confirm that all expected records have been received.

Where transfer of documentation via the digital documentation platform is not feasible, the Buyer may consider providing documentation via paper as an exception.

Where transfer of documentation via paper has been agreed, the process for this will be as follows:

- (i) the Buyer will send hard copies of claims assessment documentation to the Supplier via secure courier; and
  - (ii) the Supplier must acknowledge receipt of the documentation to the Buyer within 1 day of receipt; and
  - (iii) Once the Supplier has completed the assessment, they must return the evidence documentation to the Buyer by secure courier within 5 working days of completing the assessment.
- 2.3. During the initial period following the Service Commencement Date whereby the Supplier will be required to complete the Covid vaccine medical assessment claims, the Buyer proposes to send claim assessments to the Supplier in a phased approach and would work with the Supplier during implementation planning to agree the frequency and volume of cases to be sent but would expect to send a certain number per week in order to stagger the issuing of cases to the Supplier.
- 2.4. the timescales for the Supplier to carry out the claims assessments, provide Advice and the Outcome Report to the Buyer following receipt of the claims assessment documentation are as follows:
- (i) for medical claims assessments, 10 working days following receipt.
  - (ii) for complex medical claims assessments (i.e. where the Supplier has identified that due to complex or conflicting evidence, Expert guidance is required), 10 working days following receipt of the Expert guidance.
  - (iii) for cases where it is identified that additional medical evidence is required, 10 working days following receipt by the Supplier of the additional evidence.



2.5. the Supplier must ensure that the Buyer is kept informed throughout the medical assessment process from receipt of the Case Assessment Documentation to the point where the advice and Outcome Report have been communicated back to the Buyer.

The Supplier shall:

- (i) for a medical claims assessment case - inform the Buyer on receipt of the Case Assessment Documentation and as any issues arise during the assessment process.
- (ii) for a complex medical claims assessment - inform the Buyer within 24 hours of a case being identified as complex. Once the Buyer has acknowledged the position and agreed deadlines for resolution, the Supplier should thereafter provide regular updates on progress.
- (iii) where it has been identified that there is Incomplete Case Assessment Documentation and additional medical evidence is required - inform the Buyer within 24 hours. The Buyer then will be responsible for obtaining the additional evidence needed and providing this back to the Supplier once it is received.

2.6. The Supplier must provide the completed Outcome Report with the associated supporting Advice to the Buyer via an appropriate digital platform.

2.7. The Supplier is not expected to deal with any direct enquiries from applicants in connection with the Service. Any enquiries received by the Supplier should be passed over to the Buyer to deal with.

### 3. Assessment Process

3.1. This paragraph concerns the process of the Supplier assessing claims and providing Advice in relation to whether, on the balance of probabilities, a person is, or was before their death, severely disabled due to vaccination against any of the diseases to which The Vaccine Damages Payment Act 1979 applies to assist in the decision to award a benefit through the Vaccine Damage Payment Scheme.

3.2. The scope of the Service is as follows:

- (a) the Supplier shall assess and provide Advice in respect of each medical assessment referred to the Supplier by the Buyer.
- (b) The Supplier is required to undertake all appropriate action to complete the assessment. This includes providing Advice based on the evidence presented and the consensus of medical opinion, requesting additional medical evidence from the Buyer and obtaining Expert guidance if required.
- (c) The provision of Advice under the Service will include:
  - (i) advice on causation and whether, on the balance of probabilities the subject of the claim is disabled as a result of vaccination based on consideration of appropriate evidence including:

- a. the documentary evidence provided by the claimant and the facts of the case
  - b. the current consensus of informed medical opinion including, where appropriate, reference to The Green Book [Immunisation against infectious disease - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/immunisation-against-infectious-disease), relevant epidemiological evidence and the developing evidence base of informed medical opinion
  - c. The individual circumstances of the case
  - d. Critical evaluation of the evidence demonstrating how the evidence has been weighed up and addressing any conflicts in the evidence, and
- (ii) if causation is established and vaccination is considered, on the balance of probabilities to have caused disablement, advice on the level of disablement caused by the vaccination and whether the level of disablement is severe, or may become so in future, as defined by the Vaccine Damage Payments Act 1979, assessed in accordance with Section 103 of The Social Security Contributions and Benefits Act 1992.( including:-
- a. The impact of the disablement, now and in the future, with comparison to a person of the same age and sex whose physical and mental condition is normal, on the ability to function and carry out normal day to day activities,
  - b. If the disablement, now or in the future, is considered to be severe, assessed in accordance with Section 103 of The Social Security Contributions and Benefits Act 1992 and the Prescribed Degrees of Disablement set out in Schedule 2 of the Social Security (General Benefit) Regulations 1982.
- (iii) presentation of that Advice in an Outcome Report that is clear, objective, reasoned and referenced including:
- a. A summary of the history from the evidence provided by the claimant, including the relevant chronology of the vaccination, the injury or injuries that are alleged to have been caused by the vaccine, the effects and symptoms associated with the injury or injuries and the history following the vaccination
  - b. Relevant past medical, developmental and family history
  - c. The advice on whether, on the balance of probabilities, there is considered to be a causal link between the vaccination and the injury or injuries complained of, to include:
  - d. Reference to the facts of the case that support and do not support a causal link and the reasoning for those conclusions
  - e. Explanation of any conflicting evidence and how those conflicts have been resolved
  - f. Reference to the consensus of informed medical opinion and its relevance to the facts of the individual case and the conclusion reached.
  - g. If, on the balance of probabilities, vaccination caused the injury or injuries to indicate the impact and resulting disability both now and in the future with reference to the evidence provided.
  - h. Advice on the degree of disablement both now and in the future, making appropriate reference to the prescribed degrees of disablement guidelines to justify the conclusion and explaining any comparisons drawn for the purpose of advising on the injury or degree of disablement in the particular case.
- (d) the Supplier shall inform the Buyer of the advice reached, providing a detailed Outcome Report supporting the advice, any relevant assessments or supporting rationale and returning all supporting evidence.

- (e) the Supplier shall ensure that the advice, Outcome Report and any supporting rationale delivered to the Buyer shall:
  - (i) be legible; and
  - (ii) be written in clear, unambiguous language which is free of medical jargon; and
  - (iii) clearly refer to and consider all available evidence; and
  - (iv) reflect the consensus of published evidence and medical opinion (or else clearly explain why this is not the case); and
  - (v) provide clear rationale for the advice which will stand up to scrutiny and audit; and
  - (vi) include a report conclusion which is written in such a way that it can be clearly understood by non-medical people and worded so that it could be passed over to the claimant.
- (f) the Supplier may decide from time to time that there is a need to carry out a face-to-face consultation with a claimant in order to decide on the degree of disablement. It is not expected by the Buyer that face-to-face assessments will be a general requirement in delivering the Service.
- (g) However, if the supplier believes that one is needed, they will need to:
  - (i) consult with the Buyer regarding the justification for a face-to-face assessment and give clear rationale for the need for one; and
  - (ii) agree with the Buyer appropriate procedures and safe-guarding measures for the meeting on a case-by-case basis; and
  - (iii) ensure that any face-to-face assessment is carried out by appropriate Personnel.
- (h) The Supplier would be required to support any Appeals process on a medical assessment which they have carried out which may include provision of witness statements and/or other activities as directed.

#### 4. Complex Cases

- 4.1. This paragraph concerns the process whereby the Supplier is unable to complete an assessment and provide Advice based on the evidence provided with the application and the consensus of published evidence and medical opinion, as the evidence is deemed complex and/or is conflicting and therefore requires Expert guidance for the Supplier to provide advice.
- (a) the Supplier will advise the Buyer where Expert guidance is to be sought in order to provide Advice; and
  - (b) the Supplier and Buyer should agree a reasonable deadline for resolution on a case-by-case basis; and
  - (c) the Supplier will seek appropriate Expert guidance as relevant and keep the Buyer updated with progress during this referral process. Where agreed deadlines are unlikely to be met, the Supplier should notify the Buyer; and

- (d) once the Supplier has received the requested guidance, it will have 10 working days to carry out the medical assessment and provide Advice and a completed Outcome Report to the Buyer.

## 5. Reporting

- 5.1. The Supplier will be expected to provide regular MI reports to the Buyer relevant to the Service and these requirements are outlined in Schedule 6.

## 6. Quality Assurance

- 6.1. This paragraph concerns the quality assurance processes that are to be applied to the delivery of the Medical Assessment Service:

- (a) the Supplier shall ensure that all assessments carried out and Advice provided as part of the Service are undertaken by suitably qualified and experienced Registered Medical Practitioners who meet or exceed the following requirements:

- (i) Registered Medical Practitioner with at least 5 years post graduate experience; and
- (ii) Experience of the performance of medical and/or disability assessment, addressing questions of causation and impact in the context of legislative or policy requirements to assist the decision maker.

- (b) The Supplier shall demonstrate:

- (i) Evidence of robust clinical governance of the advisory service; and
- (ii) that relevant and appropriate training is in place in areas including disability/disablement assessment, establishing causation and critical evaluation of evidence; and
- (iii) they have identified and built an appropriate clinical knowledge and evidence base in order to support the assessment process. This must be kept up to date with changes and as medical opinion evolves; and
- (iv) that the advisory team is referencing the most up to date evidence base and has appropriate access to Expert guidance to assist with the provision of advice in respect of a Complex Case.

- (c) the Supplier shall ensure that throughout the Services are provided with reasonable care, skill and diligence and that all Supplier Personnel are appropriately qualified, trained and experienced.

- 6.2. This paragraph concerns the requirement for the Supplier to provide assurance to both itself and the Buyer around the quality of advice and Outcome Reports provided.

- (a) the Supplier shall review 100% of completed assessments carried out for quality assurance purposes; and

- (b) the Supplier shall ensure that the review of each completed assessment is undertaken within the 10-working day timeframe for assessment and ensure that:

- (i) each claim is reviewed by a different Registered Medical Practitioner to that used for the initial assessment; and
- (ii) the review process provides suitable reassurance of the quality and consistency of the Outcome Report and advice given; and

(c) the Supplier shall be expected to report on the Quality Assurance review process within the Quality Audit Report outlined in Schedule 6.

## Appendix A – Clinical governance strategy

- 1.1 The Supplier will put in place, manage and be accountable for a robust clinical governance strategy which demonstrates that an appropriate infrastructure is in place to monitor and feedback on the Service and associated activities, ensuring an integrated model of governance is delivered (Clinical Governance Strategy). The Supplier should be able to evidence demonstration of the application and implementation of the Clinical Governance Strategy and it should be available for review by the Buyer on request.

The Supplier should ensure it has an overall clinical leadership structure in place to ensure that there are adequate and appropriate structures, systems and processes in place and that these are managed in order to ensure the quality, accountability and management of the Service;

The Clinical Governance Strategy shall as a minimum include the following:

- (a) a governance framework that will ensure that the Services delivered are up to date, and are provided in accordance with changes to legislation and clinical guidance; and
- (b) a process for reporting to the Buyer any Supplier deviation from agreed clinical guidance. Such reports shall:
  - (i) be in writing; and
  - (ii) be sent to the Buyer as soon as reasonably possible; and
  - (iii) shall include any reasons for the deviation and (where relevant) details of any remedial action plans; and
- (c) a process for the monitoring and continual improvement of quality of service through a risk management and quality assurance regime; and
- (d) a process for ensuring the creation and maintenance of appropriate and accurate records by Registered Medical Practitioners, such process ensuring satisfactory audit trails are in place for clinical governance purposes; and
- (e) a process for ensuring the provision and documenting of appropriate recruitment, induction, regular clinical supervision, assessments and continuing professional development in respect of Registered Medical Practitioners (or, in the case of recruitment, potential Registered Medical Practitioners); and
- (f) a process for ensuring the prompt reporting, analysis and actioning of incidents, serious incidents and complaints (including an appropriate and effective escalation process).

## **Appendix B – Outcome Report template**

## Schedule 3 (Charges)

### 1. How Charges are calculated

#### 1.1 The Charges:

1.1.1 shall be calculated in accordance with the terms of this Schedule;

1.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and

1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

### 2. The pricing mechanisms

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

### 3. Are costs and expenses included in the Charges

3.1 Except as expressly set out in Paragraph 3.2, or otherwise stated in the Award Form the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

3.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

3.1.2 costs incurred prior to the commencement of the Contract, with the exception of the cost of Milestones Charges set out in Annex 1 to this Schedule 3, which shall become due following the issuing of a Satisfaction Certificate.

3.2 Any additional costs or expenses payable in addition to the Charges shall only be paid by the Buyer for the sole purpose of the Supplier appointing an Expert. The Supplier must obtain a quote for any additional costs or expenses (**Quote**) and provide such Quote to the Buyer and obtain the prior written consent of the Buyer, prior to instructing the Expert and requesting payment of such Quote. Should the Buyer not approve the Quote in relation to the Supplier appointing an Expert, any costs incurred in accordance with the Quote shall be borne solely by the Supplier.

### 4. When the Supplier can ask to change the Charges

4.1 The Charges will be fixed for the first 2 (two) years following the Effective Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the



date of each such anniversary is also a "**Review Date**").

4.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.

4.3 Any notice requesting an increase shall include:

4.3.1 a list of the Charges to be reviewed;

4.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:

- a) a breakdown of the profit and cost components that comprise the relevant part of the Charges;
- b) details of the movement in the different identified cost components of the relevant Charge;
- c) reasons for the movement in the different identified cost components of the relevant Charge;
- d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
- e) evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date.

4.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.

4.5 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly. In addition to the Supplier requesting a change to the Charges in accordance with Paragraphs 4 and 5, the Buyer shall have the right at each Review Date to review the charging mechanism set out in Annex 1 (**Charging Review Request**) and request a change to the calculation and/or charging mechanism payable by the Buyer in accordance with Schedule 11 (Continuous Improvement) and/or to reflect the Supplier gaining efficiencies in the delivery of the Services and Deliverables. The Supplier shall have the right to review any Charging Review Request received from the Buyer and approve such Charging Review Request (such approval not to be unreasonably withheld). Any changes to the charging mechanism will be implemented from the first (1st) Working Day following the relevant Review Date.

## **5. Other events that allow the Supplier to change the Charges**

5.1 In addition to the Buyer's right under paragraph 4.5 above, the Charges can also be varied (and Annex 1 will be updated accordingly) due to:

- 5.1.1 a Specific Change in Law in accordance with Clause 24;
- 5.1.2 a review in accordance with insurance requirements in Clause 13;
- 5.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges; and
- 5.1.4 indexation, where Annex 1 states that a particular Charge or any component is "subject to Indexation" in which event Paragraph 7 below shall apply.

**6. When the Charges are lined to inflation**

- 6.1 Where the Charges are stated to be "subject to Indexation" they shall be adjusted in line with changes in the Consumer Price Index ("CPI"). All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.
- 6.2 Charges shall not be indexed during the first 2 (two) years following the Contract Commencement Date.
- 6.3 Where Annex 1 states a Charge is subject to Indexation then it will be indexed on the date which is 2 (two) years after the Service Commencement Date to reflect the percentage change in the CPI since the Service Commencement Date. They shall be indexed on each following yearly anniversary to reflect the percentage change in the CPI since the previous change.
- 6.4 Where the CPI Index:
  - 6.4.1 used to carry out an indexation calculation is updated (for example due to it being provisional) then the indexation calculation shall also be updated unless the Buyer and the Supplier agree otherwise;
  - 6.4.2 is no longer published, the Buyer and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.

## Annex 1: Rates and Prices

### 1. Implementation Phase Milestone Charges

[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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### 2. Fixed Price Service Charges

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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### 3. Volume Based Pricing Medical Assessment



### 4. Rate Card

## Schedule 4 (Tender)

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Response	Percentage
U.S. should take action	85%
U.S. should not take action	15%





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## Schedule 5 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
■	■	■ ■ ■ ■ ■ ■	■
■	■	■ ■ ■ ■ ■ ■	■

## Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 07/21 (Updates to Legal and Policy Requirements to publish procurement information on Contracts Finder) and the corresponding Guidance ([2021-06-22 Procurement Policy Note Legal requirements to publish on Contracts Finder update June 2021 - final 2 .pdf \(publishing.service.gov.uk\)](#) and [2021-08-10 Guidance on transparency requirements for publishing on Contracts Finder- Final 1 .pdf](#))). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## Annex A: List of Transparency Reports

Title	Content	Format	Frequency
Performance metrics	[REDACTED]	to be agreed	Monthly
Performance metrics	[REDACTED]	to be agreed	Monthly
Performance metrics	[REDACTED]	to be agreed	Monthly

	[REDACTED]		
Performance metrics	[REDACTED]	to be agreed	Monthly
Performance metrics	[REDACTED]	to be agreed	Monthly
Performance metrics	[REDACTED]	to be agreed	Monthly

## Schedule 7 (Staff Transfer)

### 1. Definitions

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

**"Employee Liability"**

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 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 debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
- f) claims whether in tort, contract or statute or otherwise;

any investigation 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;

<b>"Former Supplier"</b>	a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor);
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When the Buyer can end this contract ) or 10.6 (When the Supplier can end the contract);
<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, and for the purposes of Part D: Pensions, shall include the Effective Date, where appropriate;
<b>"Supplier's Final Supplier Personnel List"</b>	a list provided by the Supplier of all Supplier Personnel whose 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>"Staffing Information"</b>	<p>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, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li><li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li></ul> <p>the identity of the employer or relevant contracting Party;</p>

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Term"**

the period commencing on the Effective Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

**"Transferring Buyer Employees"**

those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

**"Transferring Former Supplier Employees"**

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## 2. INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including



## **Schedule 7 (Staff Transfer)**

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(without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

### **3. Which parts of this Schedule apply**

Only the following parts of this Schedule which do not specify “NOT USED” shall apply to this Contract:

- Part A (Staff Transfer At Effective Date – Outsourcing From the Buyer) – NOT USED
- Part B (Staff Transfer At Effective Date – Transfer From Former Supplier)– NOT USED
- Part C (No Staff Transfer On Effective Date)
  - Part D (Pensions) – NOT USED
  - Annex D1 (CSPS) – NOT USED
  - Annex D2 (NHSPS) – NOT USED
  - Annex D3 (LGPS) – NOT USED
  - Annex D4 (Other Schemes) – NOT USED
- Part E (Staff Transfer on Exit)

**1. PART A: STAFF TRANSFER AT THE START DATE**

**2. OUTSOURCING FROM THE BUYER**

**1 What is a relevant transfer**

**1.1 The Buyer and the Supplier agree that:**

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Buyer Employee.
- 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

**2 Indemnities the Buyer must give**

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
- 2.2 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.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then -
  - 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
  - 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;

## **Schedule 7 (Staff Transfer)**

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- 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

- 2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- 2.4.2 (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

### **3 Indemnities the Supplier must give and its obligations**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements,

PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.

#### **4 Information the Supplier must provide**

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5 Cabinet Office requirements**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

#### **6 Pensions**

- 6.1 The Supplier shall comply with:
  - 6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and
  - 6.1.2 the provisions in Part D: Pensions.

### **3 PART B: STAFF TRANSFER AT THE START DATE**

## **4 TRANSFER FROM A FORMER SUPPLIER ON RE-PROCUREMENT**

### **1. What is a relevant transfer**

#### **1.1 The Buyer and the Supplier agree that:**

- 1.1.1** the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 1.1.2** as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-contractor and each such Transferring Former Supplier Employee.

#### **1.2** The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

### **2. Indemnities given by the Former Supplier**

- 2.1** Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.2** 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.
- 2.3** Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person 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 then:
  - 2.3.1** the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;

## **Schedule 7 (Staff Transfer)**

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- 2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
  - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
  - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;
  - 2.3.5 and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:
  - 2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Sub-contractor; or
  - 2.4.2 that the termination of employment was unfair because the Supplier and/or Sub-contractor neglected to follow a fair dismissal procedure.
- 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
- 2.6 If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.
- 3. Indemnities the Supplier must give and its obligations**
  - 3.1 Subject to Paragraph 3.1, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.
  - 3.2 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 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, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.

#### **4. Information the Supplier must give**

- 4.1 The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) 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. Limits on the Former Supplier's obligations**

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

#### **7. Pensions**

- 7.1 The Supplier shall comply with:
- 7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
  - 7.1.2 the provisions in Part D: Pensions.

## **PART C: NO STAFF TRANSFER ON THE START DATE**

### **1. What happens if there is a staff transfer**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
  - 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
  - 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
  - 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
  - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:
  - (a) the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
  - (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
- 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:
  - 1.3.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
  - 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure



## **Schedule 7 (Staff Transfer)**

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- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Effective Date.
- 1.5 If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

### **2. Limits on the Former Supplier's obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## 5. PART D: PENSIONS

### 1. Definitions

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	means 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>"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</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>"Fair Deal Employees"</b>	<p>those:</p> <p>(a) Transferring Buyer Employees; and/or</p> <p>(b) Transferring Former Supplier Employees; and/or</p> <p>(c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of</p>

Parts A or B or Paragraph 1.2.4 of Part C;

- (d) where the Former Supplier becomes the Supplier those employees;

who at the Effective Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

**"Fair Deal Schemes"**

means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

**"Fund Actuary"**

means Fund Actuary as defined in Annex D3 to this Part D;

**"LGPS"**

the schemes as defined in Annex D3 to this Part D;

**"NHSPS"**

the schemes as defined in Annex D2 to this Part D;

**"New Fair Deal"**

the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for Staff Pensions: Staff Transfer from Central Government*" issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and

**"Statutory Schemes"**

means the CSPA, NHSPS or LGPS.

**2. Supplier obligations to participate in the pension schemes**

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
  - 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

- 2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

**3. Supplier obligation to provide information**

**3.1 The Supplier undertakes to the Buyer:**

- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

**4. Indemnities the Supplier must give**

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Supplier hereby indemnifies the NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from 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:
  - 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
  - 4.2.2 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.
- 4.3 The indemnities in this Part D and its Annexes:
  - 4.3.1 shall survive termination of this Contract; and
  - 4.3.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

**5. What happens if there is a dispute**

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Buyer and the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:
- 5.1.1 who will act as an expert and not as an arbitrator;
  - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
  - 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and the Supplier unless the independent Actuary shall otherwise direct.

**6. Other people's rights**

- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it 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 or its own right under section 1(1) of the CRTPA.

**7. What happens if there is a breach of this Part D**

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
  - 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

**8. Transferring New Fair Deal Employees**

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:
- 8.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
  - 8.1.2 procure that the employer to which the Fair Deal 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 Employees so transferred to the New Employer.

## **9. What happens to pensions if this Contract ends**

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

## **10. Broadly Comparable Pension Schemes**

### **10.1 If either:**

- 10.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
- 10.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

### **10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):**

- 10.2.1 supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
- 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may

- reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal 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 terminated;
- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal 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 relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, 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; and
- 10.2.6 indemnify the Buyer and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

## Annex D1:

# Civil Service Pensions Schemes (CSPS)

## 1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"CSPS 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 CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
<b>"CSPS"</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; after 30 September 2018: the Designated Stakeholder Pension Scheme which is scheduled to close to new members in September 2018] and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

## 2. Access to equivalent pension schemes after transfer

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS 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 and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.



## Annex D2: NHS Pension Schemes

### 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Direction Letter"** 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 Eligible Employees;

**"NHSPS Eligible 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:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to 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) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, 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 or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible 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;

**"NHS Pensions"**

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;

**"NHSPS"**

the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;

**"NHS Pension Scheme Arrears"**

any failure on the part of the Supplier or its Sub-contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;

**"NHS Pension Scheme Regulations"**

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;

**"NHS Premature Retirement Rights"**

rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are 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;

**"Pension Benefits"**

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

**"Retirement Benefits Scheme"**

a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

**2. Membership of the NHS Pension Scheme**

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible 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, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible 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.
- 2.4 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter, 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 in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

- 2.6 The Supplier will (and will procure that its Sub-contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

**3. Access to NHS Pension Schemes after transfer**

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

**4. Continuation of early retirement rights after transfer**

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 Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

**5. What the buyer do if the Supplier breaches its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Sub-contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter.
- 5.2 If the Buyer is entitled to terminate the Contract or the Supplier (or its Sub-contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-contractors.
- 5.3 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

**6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
- 6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
  - 6.1.2 access to a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Eligible 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 Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

**7. Indemnities that a Supplier must give**

- 7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee 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.
- 7.2 The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

**8. Sub-Contractors**

- 8.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
- 8.1.1 if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Sub-contractor direction letter as soon as reasonably practicable; or
  - 8.1.2 if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.

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- 8.2 The Supplier shall procure that each Sub-contractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-contractor that are identical to the indemnities set out in Paragraph 7 of this Annex B. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## Annex D3:

# Local Government Pension Schemes (LGPS)

## 1. Definitions

- 1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Administering Authority"	in relation to <b>the Fund [insert name]</b> , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	<b>[insert name], a pension fund within the LGPS;</b>
"LGPS"	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;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);

<b>"LGPS Eligible Employees"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the 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 LGPS or of a scheme Broadly Comparable to the LGPS; and
<b>"LGPS Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, 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 must become a LGPS admission body**

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

**3. Right of set-off**

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

**4. Supplier ceases to be an LGPS Admission Body**

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly



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Comparable to the LGPS.

## **5. Discretionary benefits**

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

## **Annex D4: Other Schemes**



## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

1.1. The Supplier agrees that within 20 Working Days of the earliest of:

- 1.1.1. receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3. the date which is 12 Months before the end of the Term; and
- 1.1.4. receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

1.2. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3. The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4. The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5. From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

- 1.5.1. not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
- 1.5.2. not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make

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- pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3. not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4. not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5. not 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);
- 1.5.6. not 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;
- 1.5.7. not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor;
- 1.5.8. give the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9. co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10. promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.11. not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12. not to adversely affect pension rights accrued by all and any Fair

Deal Employees in the period ending on the Service Transfer Date;

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- 1.5.13. fully fund any Broadly Comparable pension schemes set up by the Supplier;
  - 1.5.14. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
  - 1.5.15. promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.16. fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6. On or around each anniversary of the Service Commencement Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1. the numbers of employees engaged in providing the Services;
  - 1.6.2. the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 1.6.4. a description of the nature of the work undertaken by each employee by location.
- 1.7. The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1. the most recent month's copy pay slip data;
  - 1.7.2. details of cumulative pay for tax and pension purposes;

- 1.7.3. details of cumulative tax paid;
- 1.7.4. tax code;
- 1.7.5. details of any voluntary deductions from pay; and
- 1.7.6. bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

- 2.1. A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that 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 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 including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.3. Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4. The indemnity 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.
- 2.5. Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.
  - 2.5.1. the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
  - 2.5.2. the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;



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- 2.5.3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;
- 2.5.4. if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;
- 2.6. and subject to the Replacement Supplier's and/or Replacement Sub- contractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.
- 2.7. The indemnity in Paragraph 2.5 shall not apply to:
  - 2.7.1. (a) any claim for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or
  - 2.7.2. (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure.
- 2.8. The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
- 2.9. If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.10. The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub- contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11. Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any

appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

- 2.12. The indemnity in Paragraph 2.10 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, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

## Schedule 8 (Implementation Plan and Testing)

### Part A - Implementation

#### 1) definitions

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

**"Delay"**

- a) a delay in the Achievement of a Milestone by its Milestone Date; or
- b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

**"Milestone Payment"**

a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

**Implementation Period"**

has the meaning given to it in Paragraph 7.1;

#### 2) Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 3 days after the Effective Date.
- 2.2 The draft Implementation Plan:
  - 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
  - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

#### 3) Reviewing and changing the Implementation Plan

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation

Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.

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

#### **4) Security requirements before the Effective Date**

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

#### **5) What to do if there is a Delay**

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
  - 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;

- 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
- 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
- 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## **6) Compensation for a Delay**

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
  - 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
  - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
    - the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When the Buyer can end this contract); or
    - the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
  - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
  - 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
  - 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

## **7) Implementation Plan**

- 7.1 The Implementation Period will be a two (2) Month period.
- 7.2 The Supplier's full service obligations shall formally be assumed on the Effective Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
  - 7.3.1 work cooperatively and in partnership with the Buyer, to

- understand the scope of Services;
- 7.3.2 work with the Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
- 7.3.3 liaise with the Buyer to enable the full completion of the Implementation Period activities; and
- 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
  - 7.4.1 how the Supplier will work with the Buyer Authorised Representative to capture and load up information such as asset data ; and
  - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:
  - 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
  - 7.5.2 mobilise all the Services specified in the Specification within the Contract to ensure the Services can commence on the Service Commencement Date;
  - 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
    - a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
    - b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  - 7.5.4 manage and report progress against the Implementation Plan;
  - 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will

## **Call-Off Schedule 8 (Implementation Plan and Testing)**

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be effectively communicated to the Buyer in order to mitigate them;

- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless commencement of Services by the Services Commencement Date.

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**Annex 1: Implementation Plan**

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



Project Plan - Vaccine  
Damage Payment Sch

The Milestones will be Achieved in accordance with this Schedule 8: (Implementation Plan and Testing)  
For the purposes of Paragraph 61.2 the Delay Period Limit shall be 7 days.



## Part B - Testing

### 1 Definitions

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

<b>"Component"</b>	any constituent parts of the Milestones;
<b>"Material Test Issue"</b>	a Test Issue of Severity Level 1 or Severity Level 2;
<b>"Satisfaction Certificate"</b>	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Milestone has satisfied its relevant Test Success Criteria;
<b>"Severity Level"</b>	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Test Issue Management Log"</b>	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
<b>"Test Issue Threshold"</b>	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
<b>"Test Reports"</b>	the reports to be produced by the Supplier setting out the results of Tests;
<b>"TestSpecification"</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
<b>"Test Strategy"</b>	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
<b>"Test Success Criteria"</b>	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
<b>"Test Witness"</b>	any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and
<b>"TestingProcedures"</b>	the applicable testing procedures and Test Success Criteria set out in this Schedule.

## **2 How testing should work**

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not state that any Milestone(s) has been completed and ready for Testing:
  - 2.2.1. unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - 2.2.2. until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Milestone(s); and
  - 2.2.3. until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Milestone(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Milestone for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Milestone.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

## **3 Planning for testing**

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than twenty (20) Working Days after the Effective Date.
- 3.2 The final Test Strategy shall include:
  - 3.2.1. an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 3.2.2. the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 3.2.3. the procedure to be followed should a Milestone fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Milestone produces unexpected results, including a procedure for the resolution of Test Issues;
  - 3.2.4. the procedure to be followed to sign off each Test;
  - 3.2.5. the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
  - 3.2.6. the names and contact details of the Buyer and the Supplier's Test representatives;
  - 3.2.7. a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
  - 3.2.8. the technical environments required to support the Tests; and
  - 3.2.9. the procedure for managing the configuration of the Test

environments.

#### **4 Preparing for Testing**

- 4.1 The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
  - 4.2.1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
  - 4.2.2. a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

#### **5 Passing Testing**

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

#### **6 How Milestones will be tested**

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Milestone as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
  - 6.2.1. the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
  - 6.2.2. a plan to make the resources available for Testing;
  - 6.2.3. Test scripts;
  - 6.2.4. Test pre-requisites and the mechanism for measuring them; and
  - 6.2.5. expected Test results, including:
    - a) a mechanism to be used to capture and record Test results; and
    - b) a method to process the Test results to establish their content.

#### **7 Performing the tests**

- 7.1 Before submitting any Milestone for Testing the Supplier shall subject the

relevant Milestone to its own internal quality control measures.

- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
  - 7.5.1. a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
  - 7.5.2. the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Milestone, including:
  - 7.6.1. an overview of the Testing conducted;
  - 7.6.2. identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
  - 7.6.3. the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - 7.6.4. the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
  - 7.6.5. the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.8 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion and pay the Supplier the Milestone Payment in accordance with Annex 1 of this Schedule 8. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Milestones are implemented in accordance with this Contract.

## **8 Discovering Problems**

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

## **9 Test witnessing**

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
  - 9.3.1. shall actively review the Test documentation;
  - 9.3.2. will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - 9.3.3. shall not be involved in the execution of any Test;
  - 9.3.4. shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
  - 9.3.5. may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
  - 9.3.6. may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Milestone before a Test Issue is closed.

## **10 Auditing the quality of the test**

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a

**"Testing Quality Audit")** subject to the provisions set out in the agreed Quality Plan.

- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

## **11 Outcome of the testing**

- 11.1 The Buyer will issue a Satisfaction Certificate when the Milestones satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Milestone (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
  - 11.2.1. the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
  - 11.2.2. the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Milestone (or the relevant part) to Testing; or
  - 11.2.3. where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Milestone to be satisfied.
- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
  - 11.4.1. the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all elements related to that Milestone which are due to be Tested; and

11.4.2. performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.

11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).

11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.

11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.

11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.

11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

11.9.1. any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and

## **12 Risk**

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

12.2 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

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

12.2.2. affect the Buyer's right subsequently to reject all or any element of any Milestone to which a Satisfaction Certificate relates.

## **Annex 1: Test Issues – Severity Levels**

### **8. Severity 1 Error**

- 8.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

### **9. Severity 2 Error**

- 9.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
- 9.1.1 causes a Component to become unusable;
  - 9.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 9.1.3 has an adverse impact on any other Component(s) or any other area of the Milestone;

### **10. Severity 3 Error**

- 10.1 This is an error which:
- 10.1.1 causes a Component to become unusable;
  - 10.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 10.1.3 has an impact on any other Component(s) or any other area of the Milestone;
- but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

### **11. Severity 4 Error**

- 11.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Milestone.

### **12. Severity 5 Error**

- 12.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Milestone.



## Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert  
name of Buyer] [insert

Date dd/mm/yyyy]

Dear Sirs,

### Satisfaction Certificate

Milestone(s): [Insert relevant description of the agreed Milestones].

We refer to the agreement ("**Contract**") [insert Contract reference number] relating to the provision of the [insert description of the Milestone] between the [*insert Buyer name*] ("**Buyer**") and [*insert Supplier name*] ("**Supplier**") dated [*insert Effective Date dd/mm/yyyy*].

The definitions for any capitalised terms in this certificate are as set out in the Contract.

[We confirm that all the Milestones relating to [insert relevant description of agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Milestones that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully  
[insert name]  
[insert position]  
acting on behalf of [insert name of Buyer]



## Schedule 10 (Service Levels)

### 1. Definitions

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

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

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

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

2.4.2 the Service Level Failure:

- exceeds the relevant Service Level Threshold;
- has arisen due to a Prohibited Act or wilful Default by the Supplier;
- results in the corruption or loss of any Government Data; and/or
- results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 of the Core Terms (Buyer Termination Rights).

2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Effective Date;

2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and

2.5.3 there is no change to the Service Credit Cap.

2.6 Where the Supplier is provided with Incomplete Case Assessment Documentation it shall notify the Buyer promptly which must be within the Service Level Performance Measure timeframe and provide full details explaining how the Government Data provided is Incomplete Case Assessment Documentation and request all Government Data is provided.

2.7 Following receipt of Incomplete Case Assessment Documentation the Buyer will use its reasonable endeavour to provide such outstanding information. Should the Buyer not be able to provide all required Government Data at all following a notice from the Supplier of Incomplete Case Assessment Documentation, then the Buyer will no longer require that specific Deliverable to be completed in accordance with this Schedule 10.

2.8 Subject to paragraph 2.6, if the Supplier can demonstrate to the Buyer's reasonable satisfaction that the level of performance achieved for any Service Level Performance Measure will be adversely impacted by Incomplete Case Assessment Documentation then the time taken to carry out any task in respect of that Deliverable shall not count or accrue when determining the level of performance achieved for any Service

Level Performance Measure from the time the Supplier notifies the Buyer of the receipt of Incomplete Case Assessment Documentation in accordance with paragraph 2.6 until the earlier of the time when the Buyer:

(a) provides an electronic or paper copy, as decided by the Buyer, of the required Government Data that is not Incomplete Case Assessment Documentation ; or

(b) in accordance with paragraph 2.7 the Buyer confirms that it does not have the required Government Data and therefore the Deliverable is no longer required.

2.9 Paragraph 2.7 only applies where the Supplier has been provided with Incomplete Case Assessment Documentation and has complied with paragraph 2.6

2.10 Once below the Service Level Threshold for any Service Level – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved in accordance with the Rectification Plan (Schedule 25).

### **3. Critical Service Level Failure**

On the occurrence of a Critical Service Level Failure:

3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

## **Part A: Service Levels and Service Credits**

### **1. Service Levels**

If the level of performance of the Supplier:

1.1. is likely to or fails to meet any Service Level Performance Measure; or

1.2. is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

1.2.1. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

1.2.2. instruct the Supplier to comply with the Rectification Plan Process;

1.2.3. if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or

1.2.4. if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

### **2. Service Credits**

2.1. The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2. Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

### Part A: Services Levels and Service

[illegible]

**Schedule 10 (Service Levels)**  
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	Service Levels				Service Credits for each Service Period
No.	Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Weighting	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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**Schedule 10 (Service Levels)**  
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	Service Levels				Service Credits for each Service Period
No.	Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Weighting	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>				
1	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	1	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
2	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	1	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

# Schedule 10 (Service Levels)

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Service Levels					Service Credits for each Service Period
No.	Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Weighting	
1	<p>Service Level 1</p> <p>Service Level 2</p> <p>Service Level 3</p> <p>Service Level 4</p> <p>Service Level 5</p> <p>Service Level 6</p>	<p>Key Indicator 1</p> <p>Key Indicator 2</p>	<p>Service Level Performance Measure 1</p> <p>Service Level Performance Measure 2</p> <p>Service Level Performance Measure 3</p> <p>Service Level Performance Measure 4</p> <p>Service Level Performance Measure 5</p> <p>Service Level Performance Measure 6</p> <p>Service Level Performance Measure 7</p> <p>Service Level Performance Measure 8</p> <p>Service Level Performance Measure 9</p> <p>Service Level Performance Measure 10</p>	<p>Weighting 1</p> <p>Weighting 2</p>	<p>Service Credits for each Service Period</p>

The Service Credits shall be calculated by reference to the number of Service Credits accrued in any one Service Period.

For each Service Period:

(a) the Service Credits accrued shall be converted to a percentage deduction from the Charges for the relevant Service Period on the basis of one point equating to a 0.357142857% (Service Credit Factor); and

(b) the total Service Credits applicable for the Service Period shall be calculated on the basis of the following formula:

$$WSP = SP \times W$$

Where:

- WSP** is the Weighted Service Credits for each individual Service Level for the relevant Service Period;
- SP** is the individual Service Credits that have accrued for each Service Level for the relevant Service Period; and
- W** is the weighting of each individual Service Level.

## Worked Example:

Service Level 1 with performance of 80%

SP = 4 as the performance is below the Service Level Threshold

W = 25 as the Weighting is 25

Thus WSP = 4 x 25 = 100

The individual Service Credits applicable for the Service Period are calculated on the basis of the following formula:

$$SC = \sum WSP \times X \times SCC$$

Where:

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

**ΣWSP** is the sum of the Weighted Service Credits for all the individual Service Levels for the relevant Service Period;

**X** is Service Credit Factor and

**SCC** is the Service Credit Cap which is 100% the total Supplier Profit for the relevant Service Period (prior to deduction of applicable Service Credits)

Worked Example, based on Charges in the Service Period of £10,000 and a Supplier Profit Margin of 5%:

Service Level 1 with a performance of 80%

Supplier Profit for the Service Period of £500.

**ΣWSP = 100 (from example above)**

X = Service Credit Factor = 0.357142857%

SCC = £500

Thus SC =  $100 \times 0.357142857\% \times £500 = £178.57$

## Part B: Performance Monitoring

### 1. Performance Monitoring and Performance Review

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

- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

**2. Satisfaction Surveys**

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

## Schedule 11 (Continuous Improvement)

### 1. Supplier's Obligations

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Effective Date.
- 1.5 The Buyer 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. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.

## **Schedule 11 (Continuous Improvement)**

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- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
  - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 As set out in Schedule 3 (Charges) at paragraph 4.5, should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

## Schedule 13 (Contract Management)

### 1. Definitions

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

<b>"Contract Manager"</b>	the manager appointed in accordance with paragraph 2.1 of this Schedule;
<b>"Operational Board"</b>	the board established in accordance with paragraph 4.1 of this Schedule;

### 2. Contract Management

2.1 The Supplier and the Buyer shall each appoint a Contract Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

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

2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

### 3. Role of the Supplier Contract Manager

3.1 The Supplier Contract Manager shall be:

- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
- 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;
- 3.1.3 able to cancel any delegation and recommence the position himself; and
- 3.1.4 replaced only after the Buyer has received notification of the proposed change.

3.2 The Buyer may provide revised instructions to the Supplier's Contract Manager in regards to the Contract and it will be the Supplier Contract Manager's



## **Schedule 13 (Contract Management)**

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responsibility to ensure the information is provided to the Supplier and the actions implemented.

- 3.3 Receipt of communication from the Supplier Contract Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

### **4. Role of The Operational Board**

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.

- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.

- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.

- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract, as well as the obligations under Annex A to this Schedule. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

- 4.6 The Operational Board meetings will be fully minuted by the Supplier Operational Board member and the minutes will be circulated by the Supplier Operational Board member to all attendees at the relevant meeting and also to the Buyer's Operational Board member and any other recipients agreed at the relevant meeting. The minutes of the preceding Operational Board meeting will be agreed and signed by both the Supplier's Operational Board member and the Buyer's Operational Board member at each following meeting.

### **5. Contract Risk Management**

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

**Schedule 13 (Contract Management)**

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- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling Contract plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Authority members of Programme Board	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
Supplier members of Programme Board	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
Start date for Programme Board meetings	April 2022 (or 3 months after the Effective Date)
Frequency of Programme Board meetings	Quarterly (Four Boards per Year)
Location of Programme Board meetings	Microsoft Teams / In Person (Stella House, Newcastle upon Tyne)

The Operational Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit

### **Schedule 13 (Contract Management)**

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derived by the Buyer and the commercial benefit derived by the Supplier;

- (b) receive and review reports from the Performance Review Meetings and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (d) be the point of escalation from the Performance Review Meetings

Additional Meetings and Boards shall be agreed, including attendees, as required by the Operational Board. These may include:

- (a) clinical governance board meeting; and
- (b) other meetings as deemed appropriate for the delivery of the Services.

## Schedule 14 (Business Continuity and Disaster Recovery)

### 1. Definitions

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

<b>"BCDR Plan"</b>	has the meaning given to it in Paragraph 2.1 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
<b>"Disaster Recovery Deliverables"</b>	the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
<b>"Disaster Recovery System"</b>	the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Related Supplier"</b>	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule; and
<b>"Supplier's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR Plan

- 2.1 A maximum of twenty (20) days after the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
  - 2.1.2 the recovery of the Deliverables in the event of a Disaster

- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
  - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
3. **General Principles of the BCDR Plan (Section 1)**
- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
  - 3.1.6 contain a risk analysis, including:
    - a) failure or disruption scenarios and assessments of likely frequency of occurrence;
    - b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
    - c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
    - d) a business impact analysis of different anticipated failures or disruptions;

## **Schedule 14 (Business Continuity and Disaster Recovery)**

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- 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
  - 3.1.9 identify the procedures for reverting to "normal service";
  - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
  - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

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

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
- 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.

- 4.2 The Business Continuity Plan shall:
- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

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

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



5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

5.2.13 testing and management arrangements.

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

6.1 The Supplier shall review the BCDR Plan:

6.1.1 on a regular basis and as a minimum once every six (6) Months;

6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and

6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably

shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. Testing the BCDR Plan**

- 7.1 The Supplier shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

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

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

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

- 9.1 The Supplier shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

## Schedule 16 (Security)

### Part A: Short Form Security Requirements

#### 1. Definitions

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

**"Breach of Security"**

the occurrence of:

- a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,

#### 2. Complying with security requirements and updates to them

2.1. The Supplier shall comply with the requirements in this Schedule as further set out in Part A Annex 1.

#### 3. Security Standards

3.1. The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.

3.2. The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

- 3.2.1. is in accordance with the Law and this Contract;
- 3.2.2. as a minimum demonstrates Good Industry Practice;
- 3.2.3. meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data;
- 3.2.4. where specified by the Buyer in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy; and

## **Schedule 16 (Security)**

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3.2.5. meets the standards set out in Part A Annex 1 of this Schedule.

3.3. The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### **4. Security breach**

4.1. Upon becoming aware of any Breach of Security or any potential or attempted Breach of Security, the Supplier shall:

4.1.1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

4.2. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance with the requirements of this Schedule, then any required rectification measures which must be taken by the Supplier to ensure compliance with this Schedule shall be at no cost to the Buyer.

## Part A – Annex 1:

The following information security controls (taken from ISO27001 Annex A) must be implemented, for the environment and activities supporting the delivery of the Services and Deliverables.

ISO27001 ref	Control	Control description
<b>Security policy</b>		
5.1.1	Policies for information security	A set of policies for information security shall be defined, approved by management, published and communicated to employees and relevant external parties.
<b>Organisation of information security</b>		
6.1.1	Information security roles and responsibilities	All information security responsibilities shall be defined and allocated.
6.2.1	Mobile device policy	A policy and supporting security measures shall be adopted to manage the risks introduced by using mobile devices.
<b>Human resource security</b>		
7.1.1	Screening	Background verification checks on all candidates for employment shall be carried out in accordance with relevant laws, regulations and ethics and shall be proportional to the business requirements, the classification of the information to be accessed and the perceived risks.
7.2.2	Information security awareness, education and training	All employees of the organisation and, where relevant, contractors shall receive appropriate awareness education and training and regular updates in organisational policies and procedures, as relevant for their job function.
7.3.1	Termination or change of employment responsibilities	Information security responsibilities and duties that remain valid after termination or change of employment shall be defined, communicated to the employee or contractor and enforced.
<b>Asset management</b>		
8.2.1	Classification of information	Information shall be classified in terms of legal requirements, value, criticality and sensitivity to unauthorised disclosure or modification.
8.2.3	Handling of assets	Procedures for handling assets shall be developed and implemented in accordance with the information classification scheme adopted by the organisation.
8.3.1	Management of removable media	Procedures shall be implemented for the management of removable media in accordance with the classification scheme adopted by the organisation.
8.3.2	Disposal of media	Media shall be disposed of securely when no longer required, using formal procedures.
8.3.3	Physical media transfer	Media containing information shall be protected against unauthorized access,

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		misuse or corruption during transportation
<b>Access control</b>		
9.1.1	Access control policy	An access control policy shall be established, documented and reviewed based on business and information security requirements
9.1.2	Access to networks and network services	Users shall only be provided with access to the network and network services that they have been specifically authorized to use.
9.2.1	User registration and de-registration	A formal user registration and de-registration process shall be implemented to enable assignment of access rights.
9.2.2	User access provisioning	A formal user access provisioning process shall be implemented to assign or revoke access rights for all user types to all systems and services.
9.2.3	Management of privileged access rights	The allocation and use of privileged access rights shall be restricted and controlled.
9.2.4	Management of secret authentication information of users	The allocation of secret authentication information shall be controlled through a formal management process.
9.2.5	Review of user access rights	Asset owners shall review users' access rights at regular intervals.
9.2.6	Removal or adjustment of access rights	The access rights of all employees and external party users to information and information processing facilities shall be removed upon termination of their employment, contract or agreement, or adjusted upon change.
9.3.1	Use of secret authentication information	Users shall be required to follow the organisation's practices in the use of secret authentication information.
9.4.1	Information access restriction	Access to information and application system functions shall be restricted in accordance with the access control policy.
9.4.2	Secure log-on procedures	Where required by the access control policy, access to systems and applications shall be controlled by a secure log-on procedure.
9.4.3	Password management system	Password management systems shall be interactive and shall ensure quality passwords.
9.4.4	Use of privileged utility programs	The use of utility programs that might be capable of overriding system and application controls shall be restricted and tightly controlled.
<b>Physical and environmental security</b>		
11.1.1	Physical security perimeter	Security perimeters shall be defined and used to protect areas that contain either sensitive or critical information and information processing facilities.
11.1.2	Physical entry controls	Secure areas shall be protected by appropriate entry controls to ensure that only authorized personnel are allowed access.
11.1.3	Securing offices, rooms and	Physical security for offices, rooms and

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	facilities	facilities shall be designed and applied.
11.1.4	Protecting against external and environmental threats	Physical protection against natural disasters, malicious attack or accidents shall be designed and applied.
11.1.5	Working in secure areas	Procedures for working in secure areas shall be designed and applied.
11.1.6	Delivery and loading areas	Access points such as delivery and loading areas and other points where unauthorized persons could enter the premises shall be controlled and, if possible, isolated from information processing facilities to avoid unauthorized access.
11.2.5	Removal of assets	Equipment, information or software shall not be taken off-site without prior authorization.
11.2.6	Security of equipment and assets off-premises	Security shall be applied to off-site assets taking into account the different risks of working outside the organisation's premises.
11.2.7	Secure disposal or re-use of equipment	All items of equipment containing storage media shall be verified to ensure that any sensitive data and licensed software has been removed or securely overwritten prior to disposal or re-use.
11.2.8	Unattended user equipment	Users shall ensure that unattended equipment has appropriate protection
11.2.9	Clear desk and clear screen policy	A clear desk policy for papers and removable storage media and a clear screen policy for information processing facilities shall be adopted.
<b>Operations security</b>		
12.1.1	Documented operating procedures	Operating procedures shall be documented and made available to all users who need them.
12.2.1	Controls against malware	Detection, prevention and recovery controls to protect against malware shall be implemented, combined with appropriate user awareness.
12.3.1	Information backup	Backup copies of information, software and system images shall be taken and tested regularly in accordance with an agreed backup policy
12.4.1	Event logging	Event logs recording user activities, exceptions, faults and information security events shall be produced, kept and regularly reviewed.
12.4.2	Protection of log information	Logging facilities and log information shall be protected against tampering and unauthorized access
12.4.3	Administrator and operator logs	System administrator and system operator activities shall be logged and the logs protected and regularly reviewed.
12.4.4	Clock synchronisation	The clocks of all relevant information processing systems within an organisation or security domain shall be synchronised to a single reference time source.



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<b>Communications security</b>		
13.1.1	Network controls	Networks shall be managed and controlled to protect information in systems and applications.
13.2.1	Information transfer policies and procedures	Formal transfer policies, procedures and controls shall be in place to protect the transfer of information through the use of all types of communication facilities.
13.2.2	Agreements on information transfer	Agreements shall address the secure transfer of business information between the organisation and external parties.
13.2.4	Confidentiality or non-disclosure agreements	Requirements for confidentiality or non-disclosure agreements reflecting the organisation's needs for the protection of information shall be identified, regularly reviewed and documented.
<b>Information security incident management</b>		
16.1.1	Responsibilities and procedures	Management responsibilities and procedures shall be established to ensure a quick, effective and orderly response to information security incidents.
<b>Compliance</b>		
18.1.1	Identification of applicable legislation and contractual requirements	All relevant legislative statutory, regulatory, contractual requirements and the organisation's approach to meet these requirements shall be explicitly identified, documented and kept up to date for each information system and the organisation
18.1.4	Privacy and protection of personally identifiable information	Privacy and protection of personally identifiable information shall be ensured as required in relevant legislation and regulation where applicable.

## Schedule 20 (Processing Data)

### Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
  - 1.1 “Controller” in respect of the other Party who is “Processor”;
  - 1.2 “Processor” in respect of the other Party who is “Controller”;
  - 1.3 “Joint Controller” with the other Party;
  - 1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they t X C (ii) hink shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - 4.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 4.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - 5.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it

## Schedule 20 (Processing Data)

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is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;

- 5.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- 5.2.1 nature of the data to be protected;
- 5.2.2 harm that might result from a Personal Data Breach;
- 5.2.3 state of technological development; and
- 5.2.4 cost of implementing any measures;

- 5.3 ensure that :

- 5.3.1 the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));

- 5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- are aware of and comply with the Processor's duties under this Schedule 20, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
- are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
- are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
- have undergone adequate training in the use, care, protection and handling of Personal Data;

- 5.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- 5.4.1 the Controller or the Processor 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;

- 5.4.2 the Data Subject has enforceable rights and effective legal remedies;

- 5.4.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its

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

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- obligations); and
- 5.4.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 6. Subject to paragraph 7 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
  - 6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 6.2 receives a request to rectify, block or erase any Personal Data;
  - 6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 6.6 becomes aware of a Personal Data Breach.
- 7. The Processor's obligation to notify under paragraph 6 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 8. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - 8.1 the Controller with full details and copies of the complaint, communication or request;
  - 8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 8.4 assistance as requested by the Controller following any Personal Data Breach; and/or

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- 8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 9.1 the Controller determines that the Processing is not occasional;
  - 9.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 9.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
10. Subject to Clause 6 of the Contract, the Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
  - 12.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 12.2 obtain the written consent of the Controller;
  - 12.3 enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
  - 12.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
14. The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Where the Parties are Joint Controllers of Personal Data**

16. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary

to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 20 (*Processing Data*).

## **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
  - 21.1 to the extent necessary to perform their respective obligations under the Contract;
  - 21.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - 21.3 where it has recorded it in Annex 1 (*Processing Personal Data*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data

## Schedule 20 (Processing Data)

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provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):

- 24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 24.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
  - 24.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - 24.2.2 provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - 25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 25.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
- 27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
- 28. Notwithstanding the general application of paragraphs 2 to 15 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 18.

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27 of this Schedule 20.



## **Annex 1 - Processing Personal Data**

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.

- The contact details of the Buyer's Data Protection Officer are: [REDACTED]  
[REDACTED]
- The contact details of the Supplier's Data Protection Officer are: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the Personal Data as set out in this Annex 1.</p>
Duration of the Processing	<p>Term of the Contract as set out in the Order Form - 5 years + 2 x 12 month options to extend and no more than 7 years in total after the End Date and/or for such time as is considered necessary for the purposes of or in connection with the Supplier's compliance with its obligations under this Contract which shall be stipulated by the Controller.</p>

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Nature and purposes of the Processing	<p>VDPS eases the present and future burdens of those suffering from vaccine damage and provides assistance to their families. The assessment determines the causation and disablement as a result of vaccinations against specified diseases as set out in the VDPS.</p> <p>The Buyer is administering VDPS and handling the claims received.</p> <p>A claimant to the VDPS will submit an application to the Buyer. The Buyer requires the Supplier to carry out a medical assessment on the evidence being presented by the claimant making a claim under the VDPS. Reference to the Services is the end-to-end process undertaken by the Supplier to assess causation and level of disablement on the basis of the medical evidence presented in relation to a Claimant's health condition and/or disability.</p> <p>The Supplier is required to undertake all appropriate action to complete the medical assessment in each case. This may include gathering evidence from the most appropriate source/reference/Expert/specialist to ensure a definitive view can be provided. If such evidence, received from a source/reference/Expert/specialist, includes Personal Data, the Supplier must process such Personal Data in accordance with this Schedule 20 and Annex 1.</p> <p>The Buyer will send the Supplier the information required by the Supplier to enable the Supplier to complete the medical assessment which may include Personal Data. Such information may be sent by the Buyer to the Supplier either electronically or in hard copy format. The Supplier may store any Personal Data processed for the purposes of completing the Services as agreed between the parties in accordance with this Annex 1. Once the medical assessment is completed and sent to the Buyer, the Supplier will then provide the Personal Data to the Buyer and the Supplier may retain a copy of the Personal Data for such time as it considers necessary for the purposes of or in connection with its compliance with its obligations under this Contract.</p>
Type of Personal Data	<p>name, address, date of birth, NI number, telephone number, pay, bank details, images, medical records, medical evidence, medical scans, school reports, social care records, and other information/evidence that is submitted by a claimant to support their case or is gathered as part of assessing the case including but not limited to evidence from source/reference/Expert/specialist.</p>

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Categories of Data Subject	Individual claimant on VDPS, representative of claimant, medical or other professionals/specialist/Experts, support workers
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	<p>Once the medical assessment is completed and provided to the Buyer, the Supplier will return any hard copy Personal Data to the Buyer and provide to the Buyer any other information obtained and processed as part of providing the Services.</p> <p>The movement of hard data shall be in accordance with the Buyer's data classification and storage policy (<a href="https://www.nhsbsa.nhs.uk/sites/default/files/2021-04/Data%20Classification%20Handling%20and%20Storage%20Policy.pdf">https://www.nhsbsa.nhs.uk/sites/default/files/2021-04/Data%20Classification%20Handling%20and%20Storage%20Policy.pdf</a>)</p> <p>Where the Personal Data is Official Sensitive (as classified within the Buyer's policy – OFFICIAL information that is of a particular sensitivity), a secure courier including tracking facility shall be used by both Buyer and Supplier, as appropriate, in accordance with BSA policy.</p> <p>Once the medical assessment is completed and sent to the Buyer, the Supplier will then return/provide any Personal Data to the Buyer and any other information obtained and processed as part of providing the Services, and the Supplier may retain a copy of such information, including the Personal Data, for such time as it considers necessary for the purposes of or in connection with its compliance with its obligations under this Contract.</p> <p>The Supplier is responsible for the timely and secure destruction of any Personal Data it retains in accordance with this Schedule 20.</p>

## **Annex 2 Not Used**

## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 of the Core Terms (Changing the Contract)

Contract Details		
This variation is between:	[Buyer] ("the Buyer") And [insert name of Supplier] ("the Supplier")	
Contract name:	[insert name of contract to be changed] ("the Contract")	
Contract reference number:	[insert contract reference number]	
Details of Proposed Variation		
Variation initiated by:	[delete] as applicable: Buyer/Supplier]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Supplier to insert] assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: 1. [Buyer to insert] original Clauses or Paragraphs to be varied and the changed clause]	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

**Schedule 21 (Variation Form)**

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1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Schedule 21 (Variation Form)**

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Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address



## Schedule 22 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 2.2 The Authority will undertake an annual review of the Insurances with the Supplier within the 3 months prior to the end of each Contract Year, to determine whether the Insurances in the Annex need to be changed. Any changes to the Insurances will be mutually agreed between the Parties and the Parties will agree a date for which the Supplier will be required to make any changes effective.

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

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

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

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

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

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

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

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a

**Schedule 22 (Insurance Requirements)**

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timely manner.

- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

a) The Supplier shall hold the following insurance cover from the Effective Date in accordance with this Schedule:

- professional indemnity insurance with cover (for each single event in each Contract Year) of not less than five million pounds (£5,000,000);
- public liability insurance with cover (for each single event in each Contract Year) of not less than five million pounds (£5,000,000); and
- employers' liability insurance with cover (for each single event in each Contract Year) of not less than five million pounds (£5,000,000).
- medical malpractice insurance with cover (for each single event in each Contract Year) of not less than two million pounds (£2,000,000).

## Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by Buyer :		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Default	[X] Working Days		

**Schedule 25 (Rectification Plan)**

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Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## Schedule 26 (Corporate Social Responsibility)

### 1. What we expect from our Suppliers

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier Code of Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf))

- 1.2 The Buyer expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, the Buyer expects its suppliers and subcontractors to comply with the standards set out in this Schedule.

### 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
- 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 3. Modern Slavery, Child Labour and Inhumane Treatment

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
  - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
  - 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
  - 3.1.5 shall make reasonable enquires to ensure that its officers,

- employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

## **4. Income Security**

### **4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 provide all workers with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.4 not make deductions from wages:
- as a disciplinary measure
  - except where permitted by law; or
  - without expressed permission of the worker concerned;
- 4.1.5 record all disciplinary measures taken against Supplier Staff; and
- 4.1.6 ensure that Supplier Staff are engaged under a recognised



employment relationship established through national law and practice.

## **5. Working Hours**

5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - the extent;
  - frequency; and
  - hours worked;

by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

- 5.3.1 this is allowed by national law;
- 5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
- 5.3.3 appropriate safeguards are taken to protect the workers' health and safety; and
- 5.3.4 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. Sustainability**

6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## **Schedule 27 (Key Subcontractors)**

### **1. Restrictions on certain subcontractors**

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Distress)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.
- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract

shall include:

- 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;
- 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
- 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
- 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
- 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
  - the data protection requirements set out in Clause 14 (Data protection);
  - the FOIA and other access request requirements set out in Clause 16 (When you can share information);
  - the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
  - the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
  - the conduct of audits set out in Clause 6 (Record keeping and reporting);
- 1.5.6 provisions enabling the Supplier to terminate the Key Subcontractor's obligations to deliver under this Contract by providing notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 10.4 (When the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
- 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer.

## Schedule 28 (ICT Services)

### 1. Definitions

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

<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
<b>"Defect"</b>	any of the following: <ul style="list-style-type: none"><li>a) any error, damage or defect in the manufacturing of a Deliverable; or</li><li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li><li>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or</li><li>d) any failure of any Deliverable to operate in conjunction with or interface with any other</li></ul>

	<p>Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;</p>
<b>"Emergency Maintenance"</b>	<p>ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;</p>
<b>"ICT Environment"</b>	<p>the Buyer System and the Supplier System;</p>
<b>"Licensed Software"</b>	<p>all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any COTS Software;</p>
<b>"Maintenance Schedule"</b>	<p>has the meaning given to it in paragraph 8 of this Schedule;</p>
<b>"Malicious Software"</b>	<p>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;</p>
<b>"New Release"</b>	<p>an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;</p>
<b>"Open Source Software"</b>	<p>computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;</p>

**"Operating Environment"**

means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:

- 4) the Deliverables are (or are to be) provided; or
- 5) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or
- 6) where any part of the Supplier System is situated;

**"Permitted Maintenance"**

has the meaning given to it in paragraph 8.2 of this Schedule;

**"Quality Plans"**

has the meaning given to it in paragraph 6.1 of this Schedule;

**"Sites"**

has the meaning given to it in Schedule 1 (Definitions), and for the purposes of this Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;

**"Software"**

Specially Written Software COTS Software and non-COTS Supplier and third party Software;

**"Software Supporting Materials"**

has the meaning given to it in paragraph 9.1 of this Schedule;

**"Source Code"**

computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

**"Specially Written Software"**

any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third

party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**"Supplier System"**

the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

## **2. When this Schedule should be used**

- 2.1 This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

## **3. Buyer due diligence requirements**

- 3.1 The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1 suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
  - 3.1.2 operating processes and procedures and the working methods of the Buyer;
  - 3.1.3 ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
  - 3.1.4 existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- 3.2 The Supplier confirms that it has advised the Buyer in writing of:
- 3.2.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
  - 3.2.2 the actions needed to remedy each such unsuitable aspect; and
  - 3.2.3 a timetable for and the costs of those actions.

## **4. Licensed software warranty**

- 4.1 The Supplier represents and warrants that:
- 4.1.1 it has and shall continue to have all necessary rights in and to the

Licensed Software made available by the Supplier (and/or any Sub- Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;

4.1.2 all components of the Specially Written Software shall:

- 4.1.2.1 be free from material design and programming errors;
- 4.1.2.2 perform in all material respects in accordance with the relevant specifications contained in Schedule 10 (Service Levels) and Documentation; and
- 4.1.2.3 not infringe any IPR.

## **5. Provision of ICT Services**

5.1 The Supplier shall:

- 5.1.1 ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
- 5.1.2 ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3 ensure that the Supplier System will be free of all encumbrances;
- 5.1.4 ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5 minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

## **6. Standards and Quality Requirements**

- 6.1 The Supplier shall develop, in the timescales specified in the Award Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3 Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.



6.4 The Supplier shall ensure that the Supplier Personnel shall at all times during the Contract Period:

6.4.1 be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;

6.4.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

6.4.3 obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## **7. ICT Audit**

7.1 The Supplier shall allow any auditor access to the Supplier premises to:

7.1.1 inspect the ICT Environment and the wider service delivery environment (or any part of them);

7.1.2 review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;

7.1.3 review the Supplier's quality management systems including all relevant Quality Plans.

## **8. Maintenance of the ICT Environment**

8.1 If specified by the Buyer in the Award Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.

8.2 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

8.3 The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

8.4 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## **9. Intellectual Property Rights in ICT**

9.1 **Assignments granted by the Supplier: Specially Written Software**

9.1.1 The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer

with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:

- the Documentation, Source Code and the Object Code of the Specially Written Software; and
- all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the **"Software Supporting Materials"**).

9.1.2 The Supplier shall:

- inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
- deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
- without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3 The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2 Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1 Unless the Buyer gives its Approval the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software;

- b) third party software that is not COTS Software

9.2.2 Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3 Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

- 9.2.3.1 notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and
- 9.2.3.2 only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4 Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5 The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

### **9.3 Licences for COTS Software by the Supplier and third parties to the Buyer**

9.3.1 The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2 Where the Supplier owns the COTS Software it shall make

available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3 Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4 The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1 will no longer be maintained or supported by the developer; or

9.3.4.2 will no longer be made commercially available

#### **9.4 Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.

#### **9.5 Licence granted by the Buyer**

9.5.1 The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

#### **9.6 Open Source Publication**

9.6.1 Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which

is:

- 9.6.1.1 suitable for publication by the Buyer as Open Source; and
  - 9.6.1.2 based on Open Standards (where applicable),
- and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2 The Supplier hereby warrants that the Specially Written Software and the New IPR:

- 9.6.2.1 are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
- 9.6.2.2 have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
- 9.6.2.3 do not contain any material which would bring the Buyer into disrepute;
- 9.6.2.4 can be published as Open Source without breaching the rights of any third party;
- 9.6.2.5 will be supplied in a format suitable for publication as Open Source ("the Open Source Publication Material") no later than the date notified by the Buyer to the Supplier; and
- 9.6.2.6 do not contain any Malicious Software.

9.6.3 Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- 9.6.3.1 as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- 9.6.3.2 include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7 Malicious Software**

- 9.7.1 The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 9.7.2 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 Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
- 9.7.4 by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
- 9.7.5 by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **10. Supplier Furnished Terms**

### **10.1 Software Licence Terms**

- 10.1.1 Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in [insert reference to relevant Schedule].
- 10.1.2 Terms for licensing of COTS Software in accordance with Paragraph 9.3 are detailed in [insert reference to relevant Schedule].

### **10.2 Software as a Service Terms**

- 10.2.1 Additional terms for provision of a Software as a Service solution are detailed in [insert reference to relevant Schedule].

### **10.3 Software Support & Maintenance Terms**

- 10.3.1 Additional terms for provision of Software Support & Maintenance Services are detailed in [insert reference to relevant Schedule]]

## Schedule 29 (Key Supplier Staff)

- 1.1 The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date (“**Key Staff**”).
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
  - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing

any Key Staff.



## Annex 1- Key Roles

Key Role	Key Staff	Contract Details
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]

## Schedule 30 (Exit Management)

### 1) Definitions

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

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
<b>"Registers"</b>	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;

<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule.

## 2) **Supplier must always be prepared for contract exit**

2.1 The Supplier shall within 30 days from the Effective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

- 2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub- contracts and other relevant agreements required in connection with the Deliverables; and
- 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables

**("Registers").**

2.3 The Supplier shall:

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
- 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing

to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

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

### **3) Assisting re-competition for Deliverables**

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may request in writing to disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### **4) Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Effective Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:

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- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
- 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the End Date together with any reasonable costs required to effect such transfer;
- 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the End Date;
- 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

#### **4.4 The Supplier shall:**

- 4.4.1 maintain and update the Exit Plan (and risk management plan for the Exit Plan) no less frequently than:
  - a) every twelve (12) months from the Effective Date throughout the Contract Period; and
  - b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
  - c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
  - d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
- 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4

(as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## **5) Termination Assistance**

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the End Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Deliverables.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **6) Termination Assistance Period**

6.1 Throughout the Termination Assistance Period the Supplier shall:

6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;

6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;

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- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7) Obligations when the contract is terminated**

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

and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8) Assets, Sub-contracts and Software**

8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

8.2.2 which, if any, of:

- (a) the Exclusive Assets that are not Transferable Assets; and
- (b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination



Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non- Exclusive Assets, the Supplier shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

8.7 The Buyer shall:

8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## **9) No charges**

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

## **10) Dividing the bills**

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- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.