

Services Agreement Combined Schedules

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Agreement for Services

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Schedule 1

Definitions

Schedule 1: Definitions

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, replaced or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) 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.

Schedule 1 (Definitions)

Crown Copyright 2023

- 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 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- 1.4.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 1.4.2 any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 1.5 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.
- "Accounting Reference Date"** means in each year the date to which the Supplier prepares its annual audited financial statements;
- "Achieve"**
- (a) in respect of a Test, to successfully pass a Test without any Test Issues; and
- (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 14 (*Acceptance Procedures*),
- and "**Achieved**" and "**Achievement**" shall be construed accordingly;
- "Affected Party"** the Party seeking to claim relief in respect of a Force Majeure Event;
- "Affiliate"** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- "Allowable Assumptions"** an assumption in relation to the Charges that has been accepted by the Authority as a cause for a Change should it prove not to be correct;

“Annual Contract Report”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <ul style="list-style-type: none">(c) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and(d) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
“Approved Sub-Licensee”	<p>any of the following:</p> <ul style="list-style-type: none">(a) a Crown Body;(b) any third party providing services to a Crown Body; and/or(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none">(a) the Authority’s internal and external auditors;(b) the Authority’s statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) any party formally appointed by the Authority to carry out audit or similar review functions; and(f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Authority Assets”	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	<ul style="list-style-type: none">(g) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;(h) IPRs created by the Authority independently of this Contract; and/or(i) Crown Copyright which is not available to the Supplier otherwise than under this Contract; <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
“Authority Cause”	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <ul style="list-style-type: none">(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or

	(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
“Authority Data”	<p>(c) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(d) any Personal Data for which the Authority is the Controller;</p>
“Authority IT Strategy”	the Authority’s IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;
“Authority Materials”	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Authority; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
“Authority Premises”	premises owned, controlled or occupied by the Authority and/or any Crown Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“Authority Representative”	the representative appointed by the Authority pursuant to Clause 11.4 (<i>Representatives</i>);
“Authority Requirements”	the requirements of the Authority set out in Schedule 2 (<i>Services Description</i>), Schedule 3 (<i>Performance Levels</i>) Schedule 4 (<i>Standards</i>), Schedule 5 (<i>Security Management</i>), Schedule 6 (<i>Insurance Requirements</i>) Schedule 13 (<i>Implementation Plan</i>), Schedule 24 (<i>Reports and Records</i>)

	<i>Provisions</i>), Schedule 25 (<i>Exit Management</i>) and Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Authority Responsibilities”	the responsibilities of the Authority specified in Schedule 7 (<i>Authority Responsibilities</i>);
“Authority Software”	software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;
“Authority System”	the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1.2 of Part B of Schedule 3 (<i>Performance Levels</i>);
“Baseline Security Requirements”	the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 (Baseline Security Requirements), as updated from time to time by the Authority and notified to the Supplier;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 18 (<i>Financial Distress</i>);
“Breakage Costs Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Certificate of Costs”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);

“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2: Change Authorisation Note;
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 22 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of 1 (<i>Change Request Form</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“Commercially Sensitive Information”	<p>the information listed in Schedule 9 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4.1 (<i>Unacceptable KPI Failure</i>);
“Compensation Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);

“Condition Precedent” has the meaning given in Clause 4.2 (*Condition Precedent*);

“Confidential Information”

- (d) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (e) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Contract;
- (f) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (g) Information derived from any of the above,
but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or

	<p>(v) relates to the Supplier's:</p> <p>(1) performance under this Contract; or</p> <p>(2) failure to pay any Sub-contractor as required pursuant to Clause 15.14.2 (<i>Supply Chain Protection</i>);</p>
“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority;
“Contract”	the contract between the Authority and the Supplier;
“Contract Change”	any change to this Contract other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
“Contracts Finder”	the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015;
“Contract Year”	<p>(h) a period of 12 months commencing on the Effective Date; or</p> <p>(i) thereafter a period of 12 months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Corporate Change Event”	<p>means:</p> <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p> <p>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</p>

- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Change Event Grace Period”

means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event

“Corporate Resolvability Assessment (Structural Review)”

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 2: Corporate Resolvability

Assessment (Structural Review) of Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);

“Costs”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“CPP Milestone”	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 14 (<i>Testing Procedures</i>);
“Critical National Infrastructure” or “CNI”	<p>means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <ul style="list-style-type: none"> (k) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or (l) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	<ul style="list-style-type: none"> (m) the Supplier accruing in aggregate 160 or more Service Points (in terms of the number of points allocated) in any period of 6 months; or (n) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Authority and specified in Paragraph 1.1 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Crown Copyright”	has the meaning given in the Copyright, Designs and Patents Act 1988

“CRP Information”	means the Corporate Resolution Planning Information, together, the: <ul style="list-style-type: none"> (a) Exposure Information (Contracts List); (b) Corporate Resolvability Assessment (Structural Review); and (c) Financial Information and Commentary
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Data Loss Event;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none"> (a) the UK GDPR; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy; and (d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“DDAT”	Authority’s Digital, Data and Technology directorate
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or

	<p>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<p>(c) any error, damage or defect in the manufacturing of a Deliverable; or</p> <p>(d) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</p> <p>(e) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or</p> <p>(f) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;</p>
“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 15 (<i>Charges and Invoicing</i>);
“Deliverable”	an item, feature or software delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other

	assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (<i>Implementation Plan</i>);
“Disclosing Party”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	<p>(c) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(d) where the Disclosing Party is the Authority, the Authority and any Crown Body with which the Authority or the Supplier interacts in connection with this Contract;</p>
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(e) is required to be supplied by the Supplier to the Authority under this Contract;</p>

- (f) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (g) is required by the Supplier in order to provide the Services; and/or
- (h) has been or shall be generated for the purpose of providing the Services;

“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“DPA 2018”	the Data Protection Act 2018;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
“EEA”	European Economic Area
“Effective Date”	the later of: <ul style="list-style-type: none"> (a) the date on which this Contract is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (<i>Condition Precedent</i>);
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Crown Body in relation to such Regulations;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty,

disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“Estimated Initial Service Charges”

the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;

“EU GDPR”

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;

“EU”

European Union

“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 25 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 25 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	the process described in Paragraph 6 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Exposure Information (Contracts List)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 2 and Annex 1 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 18 (<i>Financial Distress</i>);
“Financial Information and Commentary”	means part of the CRP Information requirements set out in accordance with Paragraph 2 and Annex 3 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Financial Distress Remediation Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“Financial Model”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);

“Financial Transparency Objectives”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Crown Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“General Anti-Abuse Rule”	<ul style="list-style-type: none">(a) the legislation in Part 5 of the Finance Act 2013; and(b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in

the form set out in Schedule 29 (*Key Personnel*), or any guarantee acceptable to the Authority that replaces it from time to time;

“Guarantor”	Jacobs Engineering Group Inc. a company incorporated under the laws of the state of Delaware (USA), with registration number 2114321, whose registered office is at 1209 Orange Street, Wilmington, DE 19801, USA and a principal trading address at 1999 Bryan Street, Suite 3500, Dallas, TX 75201, USA
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Crown Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 22 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
“Independent Controller”	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration,

electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Initial Term”

the period of 4 years from and including the Effective Date;

“Initial Upload Date”

means the occurrence of an event detailed in Schedule 24 (*Reports and Records Provisions*) Annex 3: *Records To Upload To Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

“Insolvency Event”

with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days;

- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
- “Intellectual Property Rights” or “IPRs”**
 - (h) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
 - (i) 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
 - (j) all other rights having equivalent or similar effect in any country or jurisdiction;

“Intervention Cause”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Notice”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 27.2.3 (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Supplier accruing in aggregate 120 or more Service Points (in terms of the number of points allocated) in any period of 6 months; (d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or (e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“IT”	information and communications technology;
“IT Environment”	the Authority System and the Supplier System;
“Joint Controllers”	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones;
“Key Performance Indicator”	the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);

“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
“Key Roles”	a role described as a Key Role in Schedule 29 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none">(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or(b) with a Sub-contract with charges payable (monthly value) by the Supplier which exceed 10% of the Monthly Service Charges payable under this Contract for more than one month;
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Law”	any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any

Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Management Information”	the management information specified in Schedule 3 (<i>Performance Levels</i>), Schedule 15 (<i>Charges and Invoicing</i>) and Schedule 21 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Material Default”	this may be a material single event of Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default
“Material KPI Failure”	<ul style="list-style-type: none">(a) a Serious KPI Failure;(b) a Severe KPI Failure; or(c) a failure by the Supplier to meet a KPI Service Threshold;
“Material PI Failure”	<ul style="list-style-type: none">(a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or(b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);

“MBTP”	Authority’s Migration and Borders Technology Portfolio;
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 14 (<i>Acceptance Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 15 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Month”	a calendar month and “ monthly ” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 28 (<i>Staff Transfer</i>) of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

“Notifiable Default”	shall have the meaning given in Clause 25.1 (<i>Rectification Plan Process</i>);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(c) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(d) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Open Licence”	<p>means any material that is published for use, with rights to access, copy and modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles , and includes the Open Source publication of Software;</p>
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a

	recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Authority System and the Sites;
“Operational Change”	<p>any change in the Supplier’s operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none">(a) will not affect the Charges and will not result in any other costs to the Authority;(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority’s IT infrastructure; and(d) will not require a change to this Contract;
“Operational Service Commencement Date”	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none">(e) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and(f) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
“Operational Services”	the operational services described as such in the Services Description;
“Other Supplier”	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time;
“Outline Implementation Plan”	the outline plan set out at Annex A of Schedule 13 (<i>Implementation Plan</i>);
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;

“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2.2 (<i>Termination by the Authority</i>) or 31.3.2 (<i>Termination by the Supplier</i>) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;
“Performance Monitoring Report”	has the meaning given in Schedule 3 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Data Loss Event”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Preceding Services”	has the meaning given in Clause 5.2.2 (<i>Standard of Services</i>);
“Prescribed Person”	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’, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies , as updated from time to time;
“Processor”	has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor

	engaged in the performance of its obligations under this Contract;
“Strategic Board”	the body described in Paragraph 5 of Schedule 21 (<i>Governance</i>);
“Prohibited Act”	<ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;(c) an offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);(ii) under legislation or common law concerning fraudulent acts; or(iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or(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;
“Protective Measures”	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in Schedule 5 (<i>Security Management</i>);

“Project Specific IPRs”	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier’s obligations under this Contract;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
“Quality Plans”	has the meaning given in Clause 6.1 (<i>Quality Plans</i>);
“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);
“Recipient”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Recall”	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
“Records”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<p>(c) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (<i>Submission of the draft Rectification Plan</i>) or 25.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(d) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier</p>

pursuant to Clause 25.7 (*Agreement of the Rectification Plan*);

- (e) the Supplier failing to rectify a Material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 25.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that Material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the Material Default;
- (f) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (g) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (h) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in Schedule 25 (*Exit Management*);

“Reimbursable Expenses”

has the meaning given in Schedule 15 (Charges and Invoicing) Paragraph 1 (Definitions)

“Relevant Authority” or “Relevant Authorities”

means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

“Relevant IPRs”

IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party

	Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
“Relevant Preceding Services”	has the meaning given in Clause 5.2.2 (<i>Standard of Services</i>);
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 29.2 (<i>Authority Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 27.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 27.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 28.1.1 (<i>Step-In Rights</i>);

“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Annex 4 of Schedule 15 (<i>Charges and Invoicing</i>);
“Security Management Plan”	the Supplier’s security plan as attached as Annex 2 of Schedule 5 (<i>Security Management</i>) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 5 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 15 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>)
“Service Credit Cap”	<p>(a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, 10% of the Estimated Initial Service Charges; and</p> <p>(b) during the remainder of the Term, 10% of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;</p>
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 15 (<i>Charges and Invoicing</i>);
“Service Period”	<p>a calendar month, save that:</p> <p>(a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and</p> <p>(b) the final service period shall commence on the first day of the calendar month in which the Term expires or</p>

terminates and shall end on the expiry or termination of the Term;

“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Services”	any and all of the services to be provided by the Supplier under this Contract, including those set out in Schedule 2 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Services Description”	the services description set out in Schedule 2 (<i>Services Description</i>);
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
“SME”	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Social Value”	the additional social benefits that can be achieved in the delivery of the Contract, set out in the Authority’s Requirements;
“Social Value PI”	The Social Value performance indicators set out in Table 2 of Part A: Key Performance Indicators and Subsidiary Performance Indicators Tables of Annex 1: Key Performance

	Indicators and Subsidiary Performance Indicators of Schedule 3 (<i>Performance Levels</i>);
“Social Value KPI”	The Social Value key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Software”	Specially Written Software, Supplier Software and Third Party Software;
“Software Supporting Materials”	has the meaning given in Paragraph 1.1.1 of Schedule 32 (<i>Intellectual Property Rights</i>) (<i>Specially Written Software and Project Specific IPRs</i>);
“Source Code”	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
“Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract.
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 4 (<i>Standards</i>);
“Statement of Work” or “SOW”	Where appropriate, elements of the delivery of the Technical Architecture Services may be agreed by the Parties through a separate statement of work, which shall set out the specific Deliverables to be provided by the Supplier and the Charges and associated arrangements that will be applicable under the Contract in relation to such delivery;
“Step-In Notice”	has the meaning given in Clause 28.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	(a) any event falling within the definition of a Supplier Termination Event;

	<ul style="list-style-type: none"> (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract; (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (<i>Step-In Rights</i>) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the Authority to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 28.5.2 (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 28.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 28.6 (<i>Step-In Rights</i>);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	<p>any third party with whom:</p> <ul style="list-style-type: none"> (g) the Supplier enters into a Sub-contract; or (h) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Processor related to this Contract;
“Subsidiary Performance Indicator”	the performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);

“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 34.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<p>(i) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or</p> <p>(j) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier COTS Background IPRs”	<p>Any embodiments of Supplier Background IPRs that:</p> <p>(k) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(l) has a Non-trivial Customer Base;</p>
“Supplier COTS Software”	<p>Supplier Software (including open source software) that:</p> <p>(m) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(n) has a Non-trivial Customer Base;</p>
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

“Supplier Non-COTS Background IPRs”	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Margin”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 8 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	any information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none"> (o) the Supplier’s level of performance constituting a Critical Performance Failure in accordance with Clause 7.6; (p) the Supplier committing a Material Default which is irremediable; (q) as a result of the Supplier’s Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap

for that Contract Year as set out in Clause 23.6.1
(*Financial and other Limits*);

- (r) a Remedial Adviser Failure;
- (s) a Rectification Plan Failure;
- (t) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 17 (*IPRs Indemnity*);
 - (ii) Clause 33 (*Compliance*);
 - (iii) Clause 37.6.2 (*Prevention of Fraud and Bribery*); and/or
 - (iv) Paragraph 6 of Schedule 18 (*Financial Distress*);
 - (v) Paragraph 3 of Part B to Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
- (u) the representation and warranty given by the Supplier pursuant to Clauses 3.2.8 or 3.2.9 (*Warranties*) being materially untrue or misleading;
- (v) the Supplier committing a Material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (w) the Supplier committing a Material Default under any of the following Clauses:
 - (i) Clause 5.5.10(*Services*);
 - (ii) Clause 21 (*Protection of Personal Data*);
 - (iii) Clause 20 (*Transparency and Freedom of Information*);
 - (iv) Clause 19 (*Confidentiality*);
 - (v) Clause 33 (*Compliance*);
 - (vi) in respect of any security requirements or Cyber Essentials obligations set out in Schedule 2 (*Services Description*), Schedule 5 (*Security Management*) or the Baseline Security Requirements;

- (vii) in respect of any requirements set out in Schedule 32 (Intellectual Property Rights) and/or
 - (viii) in respect of any requirements set out in Schedule 28 (*Staff Transfer*);
- (x) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 17 (*Benchmarking*);
- (y) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (z) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (aa) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the change of Control;
- (bb) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (cc) any failure by the Supplier to enter into or to comply with an Admission Agreement under under Part D of Schedule 28 (*Staff Transfer*);
- (dd) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (ee) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;

- (ff) in relation to Schedule 5 (*Security Management*):
 - (i) the Authority has issued two rejection notices in respect of the Security Management Plan under Paragraph 4.5.2 (Part A)
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing;
 - (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements set out in the Annexes to Schedule 5 (*Security Management*); and/or,
 - (v) the Supplier fails to comply with the Incident Management Process;
- (gg) the Supplier is in Material Default of any Joint Controller Agreement relating to the Contract;
- (hh) a Default that occurs and continues to occur on one or more occasions within 6 Months following the Authority serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract; or
- (ii) the Supplier or its Affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;

“Supply Chain Transparency Report”

means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 24 (*Reports and Records Provisions*);

“Target Performance Level”

the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 3 (*Performance Levels*);

“Term”

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

“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 25 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 25 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 16 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 14 (<i>Acceptance Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 14 (<i>Acceptance Procedures</i>) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 14 (<i>Acceptance Procedures</i>);
“Third Party Auditor”	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 24 (<i>Reports and Records Provisions</i>);
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	Third Party IPRs that:

	(jj) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
	(kk) has a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (ll) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (mm) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;
“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;
“Third Party Provisions”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Transferring Assets”	has the meaning given in Paragraph 6.2.1 of Schedule 25 (<i>Exit Management</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Supplier Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);

“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“UK”	the United Kingdom;
“UK GDPR”	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Crown Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“Unacceptable KPI Failure”	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Schedule 24 (<i>Reports and Records Provisions</i>) (Annex 3: <i>Records To Upload To Virtual Library</i>) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 24 (<i>Reports and Records Provisions</i>); and
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

Schedule 2

Services Description

Schedule 2: Services Description

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

"Common Requirements"	Means all of the Strategic, Interface, Security, Social Value, Knowledge Management, Service Management and other Authority Requirements set out in this Schedule 2 that apply to the provision of the Services in general rather than specifically to a particular Technical Architecture Service
MBTP Technical Design Authority"	Technical design supervisory and assurance process to drive architecture decisions and standards across the entire MBTP portfolio in accordance with the direction and standards provided through the Authority's broader Technical Design leadership bodies, which include the Home Office Hub Technical Design Authority
"Supplier Staff Profile"	The indicative number, by SFIA grade, of resources likely to be required (subject to Detailed Implementation Plan) for initial deployment in provision of the Technical Architecture Services
"Technical Architecture Services"	The Services as set out in paragraph 3.2 of Schedule 2

1. Introduction

The Authority has identified that it needs the Supplier to provide specialist client-side technical architecture capabilities to support technical architecture outcomes across the MBTP, which will be defined on an iterative basis over the Term to fit with the flexible approach to programme and product delivery applied within the MBTP.

1.1 The architecture vision for MBTP is driven by the following:

1.1.1 Migration and Borders Vision and Strategy

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1.1.2 Home Office DDaT Technology Strategy

1.1.3 MBTP Technology Strategy

1.2 The technical architecture capability is a key enabler in the implementation of modern, resilient, reliable technology products and platforms. The products and platforms in the portfolio are delivered to provide flexibility and extensibility to support new business services in the future and enable potential realisation of further business benefits by adopting the following approach:

1.2.1 Focus on delivering value to the user and business as early as possible:

- (a) Seek opportunities to leverage what has been built to realise customer needs across the Home Office; and
- (b) The best solution may not always mean software development, we could enhance or tune a business process to deliver value.

1.2.2 Develop solutions with the Home Office in mind and actively champion re-use:

- (a) Design once and design jointly to maximise re-use;
- (b) Work with other programmes to understand what they are doing and how we can re-use it; and
- (c) Promote re-use of shareable aspects of MBTP

1.2.3 Develop solutions with the Home Office in mind and actively champion re-use:

- (a) Design once and design jointly to maximise re-use;
- (b) Work with other programmes to understand what they are doing and how we can re-use it; and
- (c) Promote re-use of shareable aspects of MBTP

1.2.4 Facilitate the creation of a business and technical architecture:

- (a) Set out enough of a framework for the scrum teams to follow and evolve, embrace innovation and opportunity; and
- (b) Seek opportunities to leverage what has been built to realise user needs across the Home Office

1.2.5 Enable what comes next:

- (a) Enable the architecture roadmap to ensure that any potential roadblocks are identified, and potential solutions explored through architectural spikes - for example, prototyping alternatives to certain technologies or architecture patterns;

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or, seeing if policy can be changed to simplify a complex business process;

- (b) Create and maintain the frameworks that provide for continual elaboration (from a business and technical perspective) to ensure we produce the appropriate amount of Documentation; and
- (c) Show clearly how the business and technology domains are likely to intersect - that way we can work out how best to advise on the solution, be it technical or process related.

1.3 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

2. **Services Description**

2.1 Implementation Services

2.1.1 For each of the Technical Architecture Services the Supplier shall mobilise resources and, where applicable, acquire the necessary transfer of knowledge from the Former Supplier, to successfully achieve the Milestones and commence the provision of the Services.

2.1.2 The Supplier shall set out as part of the Outline Implementation Plan in Schedule 13:

- (a) the anticipated phasing for Supplier Staff mobilisation; and
- (b) the anticipated knowledge transfer activities for each Technical Architecture Service; and
- (c) the anticipated duration of the knowledge transfer activities for the relevant Supplier Staff resources; and
- (d) other activities to be performed by the Supplier

that are expected by the Supplier to be required to achieve the Milestones.

2.1.3 All of the Milestones shall be achieved by no later than six (6) months after the Effective Date and shall be included in the Outline Implementation Plan on this basis.

2.1.4 The proposed profile of Supplier Staff required to achieve the Milestones shall be included in the Outline Implementation Plan. Irrespective of phasing of the deployment of the Supplier Staff, the aggregate usage of Supplier Staff over the period from the Effective Date to Achievement of all the Milestones in the Implementation Plan should not exceed the equivalent of 3 months usage of the

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median FTE count in the Supplier Staff Profile as set out in Appendix 2 to this Schedule 2.

2.1.5 The Supplier shall identify, for each of the activities set out in the Outline Implementation Plan, the outcomes that will be achieved through such activities and will be presented in the form of a Deliverable by the Supplier as supporting evidence that a Milestone has been achieved.

2.1.6 The Milestones to be achieved by the Supplier and set out in the Outline Implementation Plan shall include:

Implementation Milestone	Milestone Achievement Criteria	Associated Deliverables
M1- Technology Governance & Catalogue Service Established	Implementation activities have been completed in accordance with the Implementation Plan and associated Deliverables have been provided, to the reasonable satisfaction of the Authority, to demonstrate that the implementation of the Services has been successfully completed by the Supplier.	[Documented evidence and preceding Milestones – examples to be included in OIP but will be agreed in DIP]
M2 - Enterprise Architecture Service Established		
M3 - Programmes & Products Service Established		

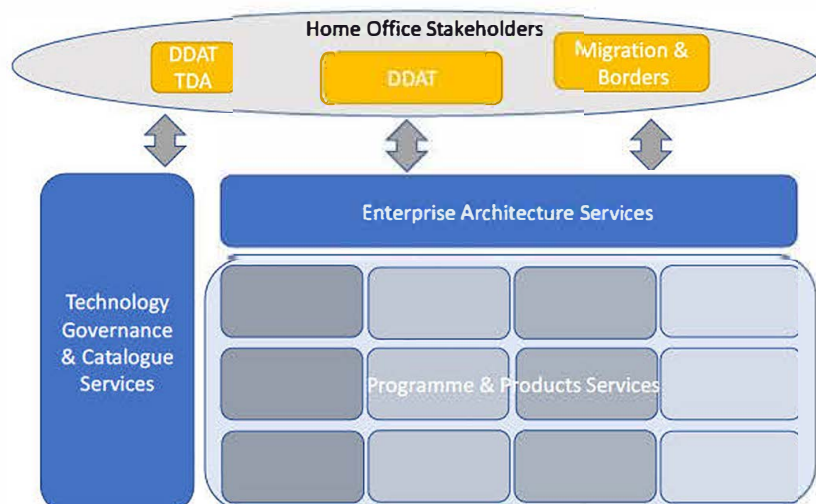
2.2 Technical Architecture Services –

2.2.1 The Technical Architecture Services are organised into the following categories, which are set out in more detail below:

- (a) Technology Governance & Catalogue Services
- (b) Enterprise Architecture Services
- (c) Programmes & Products Services

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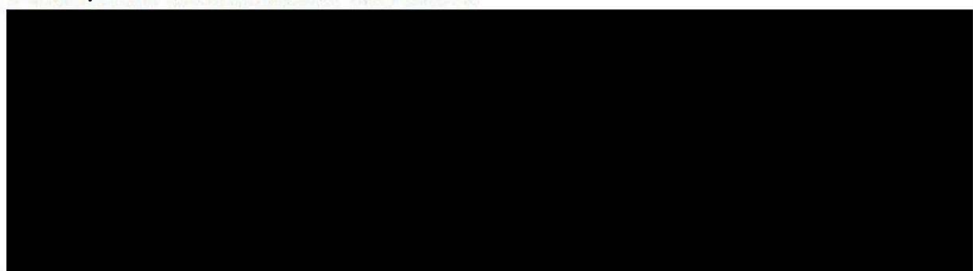


2.2.2 Technology Governance & Catalogue Services

- (a) Through the Technology Governance & Catalogue Services the Supplier shall be responsible for the necessary activities and oversight to:
- (b) Meet the Architecture Leadership & Governance requirements; and
- (c) Ensure that the Strategic Requirements and Common Requirements are met throughout the provision of the Technical Architecture Services;
- (d) Develop and maintain the technical architecture Deliverables and Resourcing Plan (DARP); and
- (e) Manage the reporting and governance obligations of the Supplier in accordance with the Agreement, including but not limited to, Schedule 21 and Schedule 24.

The Technology Governance & Catalogue Services apply across the MBTP programmes, projects and products, an overview of which is included in the [Service catalogue] at Appendix 1 to this Schedule 2, which will be updated from time to time.

2.2.3 Enterprise Architecture Services



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(b)



2.2.4 Programmes & Products Services

- (a) The Programmes & Products Services will involve the delivery of technical architecture Deliverables aligned to major programmes and products across the portfolio. The Programmes & Products Services will be subject to delivery in accordance with the following requirements (as applicable):
 - (i) Common Requirements; and
 - (ii) Solution Architecture Requirements; and
 - (iii) Integration Architecture Requirements; and
 - (iv) Information Architecture Requirements; and
 - (v) Infrastructure Architecture Requirements
- (b) Each Workstream under the Programmes & Products Services shall follow the methodology and governance arrangements determined by the Supplier as part of the Technology Governance & Catalogue Services.
- (c) The particular specifications for Deliverables required through provision of the Programmes & Products Services will be determined in accordance with the Service Management Requirements subject to the demand of the relevant Programmes and Products.

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2.3 Technical Architecture Services Requirements

2.3.1 Strategic Requirements

Common to the provision of all Technical Architecture Services, the Strategic Requirements to be met in the provision of the Technical Architecture Services are as set out below:

- (a) Drive a consistent, repeatable architecture process across the entirety of MBTP, with specific focus on delivering high-quality architecture solutions to Migration and Borders business delivery programmes and projects;
- (b) Ensure traceability of architecture deliverables to business strategy, business objectives and related expectations. Ensure IT strategy aligns and is driven by business strategy across related boundaries resulting in coordinated IT solutions;
- (c) Ensure there are clearly defined business drivers and return on investment. Challenge where business value is not clearly defined or is regarded as minimal;
- (d) Provide translation of business strategy, design and vision into deployable IT architectural concepts and technology solutions;
- (e) Drive ongoing innovation and continuously look to industry improvements to make operational efficiencies and reduce costs;
- (f) Create architecture deliverables to support the agile delivery runway, demonstrating key design concerns through layered architecture viewpoints, and providing traceability from logical architecture through to physical implementation of application and infrastructure;
- (g) Perform evaluation of the range of potential solutions to include assessment of whole life costs and focus on solutions that deliver both service excellence and value for money;
- (h) Gain approval of all new technical architecture through the MBTP Technical Design Authority (TDA), the Home Office TDA and providing representation to TDA meetings when required;
- (i) Implement processes for tracking programme and project architecture dependencies, to provide a consistent process across the portfolio that allows teams to request and prioritise architecture services;
- (j) Perform continuous assessment of deliverability and

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programme and product backlog prioritisation as a common thread of options analysis and resulting technology recommendations;

- (k) Perform continuous process for identifying and prioritising technical debt across programmes and products, where technical architects take responsibility for proactively working with programme stakeholders and product teams to commit at least 10% of delivery capacity to fixing technical debt;
- (l) Implement process for tracking portfolio wide architecture initiatives at an enterprise level such as establishing governance for Quarterly review session of enterprise architecture, tracking achievements of last Quarter to understand value delivered, getting agreement and prioritisation for initiatives for the next Quarter, and reporting on Key Performance Indicators to demonstrate value provided by enterprise architecture function;
- (m) Proactively deliver a re-use and convergence agenda in collaboration with and across Home Office portfolios;
- (n) Create a library of solution patterns that provide a repeatable process for delivery of solutions that address common business problems;
- (o) Provide and maintain a searchable, collaborative capability for capturing and maintaining key technical architecture knowledge (best practice, principles guidance, decision rationale, project and portfolio technical architecture artefacts). The purpose of this capability is to ensure that key technical architecture information is retained within HO DDaT in a way that allows new and existing stakeholders to easily understand and find / access it;
- (p) Maintain mapping between architecture domains and IT assets; and
- (q) Actively support the onboarding of Civil Servant technical architecture resources into the MBTP Chief Technology Officer (CTO) and MBTP CTO teams, providing support and training to those resources where applicable and agreed with the Home Office.

2.3.2 Architecture Leadership & Governance Requirements

The Supplier shall provide specialist architecture advice, leadership, and governance for MBTP at portfolio level and across all MBTP programmes, projects and products.

MBTP programmes and projects tend to follow an agile approach to delivery and so architects will be required to apply appropriate design and control to managing delivery in

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this context.

The required activities to be performed by the Supplier shall include the following:

- (a) Develop and maintain the DARP to reflect the current requirements of the Authority and evidence of all Deliverables delivered or to be delivered by the Supplier;
- (b) Run and administer the MBTP Technical Design Authority (TDA);
- (c) Consider, manage and address architecture concerns of key stakeholders;
- (d) Managing and developing the MBTP architecture function and its capabilities;
- (e) Maintain the architecture plan, and ensure it is communicated across MBTP (including key Migration and Borders stakeholders), at portfolio level, and as part of the wider delivery plan for all programmes and projects;
- (f) Assurance of technology selection, product evaluation and proof of concepts;
- (g) Ensuring conformance with the target enterprise architecture by implementation projects;
- (h) Provide reliable process for requesting architecture artefacts for escalating and prioritising high priority work;
- (i) Ensure a gating process is followed, design and code reviews are performed, and architectural issues / risks are appropriately addressed;
- (j) Ensure that the architecture lifecycle is maintained;
- (k) Ensure that the architecture governance framework is executed;
- (l) Ensure that the architecture capability meets current requirements;
- (m) Ensure that the architecture meets the non-functional requirements defined by MBTP programmes and projects;
- (n) Ensure that agreed architectural principles are consistently applied and clearly communicated;
- (o) Ensure that dependencies are appropriately managed between products in the delivery of MBTP programmes and projects; and

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- (p) Ensure that HO DDaT re-use agenda is supported at portfolio, programme and project level and opportunities for re-use across HO DDaT are maximised

2.3.3 Enterprise Architecture Requirements

The Supplier shall shape and lead the overall enterprise architecture for MBTP at portfolio level and for all MBTP programmes, projects and products, using open standards

The required activities to be performed by the Supplier shall include:

- (a) Maintain the current baseline enterprise architecture;
- (b) Develop and implement the target enterprise architecture in alignment with business goals, business capabilities and strategic business drivers;
- (c) Analyse the gaps between the baseline and target enterprise architecture and identify candidate items for the enterprise architecture roadmap;
- (d) Develop, implement, and maintain an architecture roadmap and the supporting implementation and migration approach, based upon an agile delivery runway for programmes and projects and the gap analysis between current and target states;
- (e) Determine an appropriate incremental approach to transition that will deliver continuous business value;
- (f) Develop, implement and maintain architecture principles and constraints to guide lower-level architecture definition and implementation, in alignment with Home Office DDaT architecture principles;
- (g) Ensure architecture outcomes and artefacts are created using industry notation (which includes ArchiMate and UML); and
- (h) Support governance functions to align delivery with enterprise architecture.

2.3.4 Information Architecture Requirements

The Supplier shall manage the architecture for data solutions within a large-scale data and data warehouse environment on cloud technologies (which includes AWS and Azure), big data/massively parallel processing technologies, as well as other relational and non-relational database technologies.

The required activities to be performed by the Supplier shall include:

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

2.3.5

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

2.4 Interface Requirements

2.4.1 Organisational Alignment

In the provision of the Services, technical architects will need to be able to operate within a hub and spoke governance model. This is applied across Home Office DDaT to strike the balance between autonomy of business-aligned portfolios, but also to allow for some central structure in design and implementation.

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Key responsibilities where the Supplier is operating within the central 'hub' team will include:

- (a) Provision of architecture leadership and governance for the spokes;
- (b) Lead on the definition of architecture at Home Office level; and
- (c) Facilitate multiple spokes to work in parallel and pull towards a shared outcome.
- (d) Key responsibilities where the Supplier is operating within one of the 'spokes', e.g. within a portfolio, are:
- (e) Lead on the definition of architecture for a business-aligned portfolio that supports the agile delivery runway;
- (f) Lead the technical architecture for one or more scrum teams; and
- (g) Lead on innovation engineering in the agile delivery lifecycle.

2.4.2 Working with Others

The Supplier will be providing the Services in a multi-disciplinary / multi-supplier environment. We require that the Supplier develops strong collaborative working relationships with the existing Home Office DDaT portfolio teams and with the Other Suppliers supporting Home Office DDaT with whom the Supplier will work. In provision of the Services the Supplier shall participate as appropriate in agreed planning events that determine delivery scope. It is recognised in an agile environment scope will change and the Supplier shall ensure that the impacts of such changes are captured and agreed in revisions to the relevant Statement of Work.

Planning events on the portfolio are run according to 'programme increments', as cadence-based, face-to-face events that serve as the heartbeat of agile delivery, aligning all the teams on the shared mission and vision.

Further information on the Programme Increments Planning process can be found here -

<https://www.scaledagileframework.com/pi-planning/>

The Authority is building up its own architectural capability; in the provision of the Services the Supplier needs to recognise this and support this intent to achieve a balanced community of Civil Servants and suppliers.

2.4.3 Supplier Staff Behaviours

In performance of the Services all Supplier Staff shall, in line with the expectations on all Civil Servants or supplier staff working in

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DDaT, embody an open and positive approach in supporting the Authority in:

- (a) Progressing the DDaT community, understanding all roles and helping to build our skills and knowledge;
- (b) Working and assessing to appropriate Standards: for instance, accessibility, the Government Digital Service (GDS) service standard and our own community practices; and
- (c) Improving our skills and approaches as well as keeping up to speed with the technology landscape.

Key behaviours that will be required of all Supplier Staff are:

- (d) Exhibiting leadership across all roles, as appropriate. This will be expected to sit alongside core work delivering technical advice and producing technical artefacts (from code to presentations) as appropriate;
- (e) Strong teamwork, which must cross organisational boundaries;
- (f) An attitude of continuous improvement - evangelising for new tools, approaches, or techniques across the Home Office; helping to improve and embed our strategic platforms across all portfolios;
- (g) Joining our technical community, with the provision of the Services including time engaged in community-focussed events and the mentoring of other staff, actively encouraging, and supporting the onboarding of civil servant resources; and
- (h) Provide clear Documentation on how the platform service offering works and provide training where appropriate, using Home Office tools and platforms as the primary source of data/information storage as directed.

The Authority requires all work undertaken to be in consideration of (and adherence to, where appropriate) our technical Standards, in particular:

- (i) with Home Office Hub Technical Design Authority principles;
- (j) any principles specific to each programme/product, for instance covering quality, lifecycle or cost controls; and
- (k) additionally, actively supporting assurance activities using GDS Service Assessments and, as necessary, other ad-hoc audit/engagement work.

2.4.4 Knowledge Management

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The Supplier shall ensure that across the provision of the Services and throughout the Term, the technical architecture principles, guidance and processes applicable to the Services shall be readily available, clearly communicated and explained with supporting material (e.g. examples, templates, knowledge sharing sessions).

This shall include:

- (a) Provision of a searchable, collaborative capability for capturing and maintaining key security architecture knowledge (best practice, principles guidance, decision rationale, project and portfolio security architecture artefacts). The main purpose to be fulfilled by this capability is to ensure that key security architecture information is retained within DDaT in a way that allows new and existing stakeholders to easily understand and find / access it; and
- (b) Sharing of Supplier's 'lessons learned' materials and relevant research papers

The Supplier shall also conduct knowledge transfer and training of Authority and/or third-party personnel, as appropriate and required by the Authority, related to all aspects of its delivery of the Services. This may include, but is not limited to:

- (c) Sharing artefacts, tools and process methodology ("two-in-a-box" model);
- (d) Providing education sessions as required on Supplier-produced materials and processes;
- (e) Providing knowledge elicitation (interview-based approach with Supplier to articulate Supplier approach and methodology, and detailed "how to" and "when to" guidance) sessions as required;
- (f) Providing job shadowing as required (allowing Authority or other resources to 'shadow' transaction preparation, transactions and transition phases); and
- (g) Supporting planning for, and performance of, the knowledge transfer activities required to hand over Deliverables or Services to the Authority and/or third-party personnel/teams.

2.5 Service Management Requirements

- 2.5.1 The Parties recognise that the detailed scope of delivery for the Technical Architecture Services is not fixed in advance for the Term and will instead be agreed on an iterative basis to meet the evolving needs of the Authority.
- 2.5.2 The Supplier shall work with the Authority on an ongoing basis to identify the required Deliverables for the Technical Architecture

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Services and shall develop an appropriate plan of activities, for agreement by the Authority, which sets out both the proposed plan for delivery and the detailed definition of the Deliverables to be achieved, together with the proposed resources required to deliver such Services (the "Deliverables and Resourcing Plan" or "DARP").

- 2.5.3 The initial DARP shall be agreed by the Parties as an Implementation Milestone (the "Reference DARP").
- 2.5.4 The DARP shall set out for each Technical Architecture Service:
- (a) Identifiable workstreams that will compose the delivery of the relevant Technical Architecture Service ("Workstreams");
 - (b) The Deliverables associated with each Workstream, including a description of those Deliverables and their Acceptance Criteria;
 - (c) Other activities to be fulfilled through that Workstream in addition to the identified Deliverables;
 - (d) The resource allocation by SFIA grade for each Workstream;
 - (e) The locations from which the Services will be performed; and
 - (f) The dependencies, or assumptions made by the Supplier, in relation to the Workstream activities which may have a commercial or business impact if not met, together with the potential associated impacts, in order that these can be assessed by the Authority. Where agreed dependencies and assumptions are not met the impact shall be recognised as applicable in the Performance Measures and revisions to the DARP where applicable
- 2.5.5 The DARP shall be prepared to show a month-by-month view of Workstream delivery and resources for the Technical Architecture Services on a rolling 12-month basis. Where a Workstream is expected to continue beyond this 12-month period the DARP shall also identify the expected completion date for that Workstream or reflect that it is expected to endure for the Term as applicable.
- 2.5.6 The DARP shall be refreshed by the Supplier on a monthly basis for review at Contract Management Board, with revisions to the content from that previously identified subject to agreement by the Authority as part of that Contract Management Board, however, the DARP shall be subject to a full review of content every 6-months following the date of agreement of the initial Reference DARP (the "DARP Full Review").
- 2.5.7 Revisions to the DARP may be agreed at the Contract Management Board without being treated as a Change unless:
- (a) The revision relates to the introduction or cessation of a

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Workstream that was not previously planned to occur in the Reference DARP;

- (b) The revision involves the increase or decrease in the total quantity of resources allocated to the Technical Architecture Services (by number or by value) of more than 5% in the 6-month period following a Full Review from the quantity of resources anticipated in the Reference DARP

2.5.8 The DARP Full Review shall consider the actual delivery and resource allocation over the preceding 6-month period versus that included in the previous Reference DARP, together with the current forward view of the outcomes required by the Authority

2.5.9 Following agreement by the Authority of a revised DARP consequent to a Full Review that agreed DARP shall then become the Reference DARP for the next Full Review in addition to its use in the Contract Management Board

2.5.10 The Supplier shall use their own equipment to perform the Services except when directed to use Home Office provided equipment by the Authority. Supplier Staff performing the Services are, unless otherwise agreed in writing, to provide the Services Monday to Friday (except on Bank Holidays in England and Wales) between the hours of 9am and 5pm (the "Service Hours").

2.5.11 For any Workstream which may require Supplier Staff to respond to events occurring outside of the Service Hours, such as a critical incident within the MBTP, this shall be recognised in the DARP in relation to that Workstream.

2.6 Social Value Requirements

2.6.1 In the performance of the Services and its obligations under the Agreement, the Supplier shall comply with the Social Value commitments in Schedule 8 (Supplier Solution)

2.6.2 The Social Value commitments to be included by the Supplier as part of the Supplier Solution shall as a minimum include support in relation to the following policy outcomes:

- (a) Increase supply chain resilience through support for innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services; and

Tackle workforce inequality through supporting in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract

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Appendix 1: Migration and Borders Technology Portfolio

MBTP drive digital ambitions, design appropriate solutions and deliver digital services quickly and effectively – our work makes a real difference in helping the Home Office achieve its ambitions to keep citizens safe and the country secure.

The work we do has a major impact on some of the most critical systems and services in a high-profile area, and attracting huge interest from ministers, wider government, the media, and the public.

MBTP has grown significantly in recent years and with a mixed workforce of just over 3,000 Civil Servants and suppliers are delivering transformation across our visa, immigration, asylum and borders capabilities through our core programmes;

- Future Borders Immigration System (FBIS) leading on the design and delivery of a new immigration system following the UK's exit from the European Union;
- New Plan for Immigration (NPI), streamlining legal immigration routes;
- Digital Services at the Border (DSAB) transforming the way the Home Office manages borders into the UK;
- Asylum Operations Transformation (AOT) identifying opportunities for digital improvements to transform efficiency and quality of decision making.

In addition to these core programmes around 160 projects are being actively managed within a structured and mature entry gate process; a way of engaging with colleagues across Migration and Borders to understand what the problems are, what the underlying business process is and therefore how technology could potentially support, enable, or deliver benefits to those areas.

OUR DIGITAL TRANSFORMATION JOURNEY

Over the last ten years our digital transformation journey across the Migration and Borders portfolio has been underpinned by the intentional adoption of the government's Digital by Default agenda and the Government Digital Service Government Digital Service - GOV.UK (www.gov.uk) (GDS) service standard. This is something that we've adopted right from beginning when our legacy system replacement programmes started, into the delivery of small and large-scale business projects and policy transformation activities.

Through time we've established a set of business products and been instrumental in driving more product-centric ways of working, in collaboration with colleagues across Migration and Borders and wider DDaT. This has helped to provide a more consistent architecture and delivery approach and ensures our products and services form part of a coherent end-to-end journey.

We also try to establish a strong alignment between business value and the technology products that we design, build and operate; where each of these products has a very specific functional purpose in the delivery of the end-to-end migration and borders capabilities.

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[Refer to “MBTP Book of Work.ppt” - – SupplierAuthority Confidential – is held on the Authority Systems as a contract artefact]

Our ‘Book of Work’ provides an overview of the programmes, projects and workstreams within the Portfolio. It shows in overview the totality of work that we currently have in flight, from the very early stages of discovery through to the end-to-end delivery.

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] actual plan for the resources to be engaged in the Implementation Services in readiness for the commencement of the Technical Architecture Services will be agreed as part of the Detailed Implementation Plan, which will account for any Transferring Employees.

Schedule 2 (Services Description)

[Subject to Contract]

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Schedule 3

Performance Levels

Schedule 3: Performance Levels

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

”Business Critical System”	system within MBTP that has not been identified in writing by the Authority to be non-business critical in relation to the Services;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1.1 of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Authority to manage and review the Supplier’s performance under this Contract, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 6.1 of Part B of Annex 1;
“Service Downtime”	any period of time during which any of the Services are not Available;

Part A: Performance Indicators and Service Credits

1. Performance Indicators

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services and Social Value by the Supplier.
- 1.2 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2. Service Points

- 2.1 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 2.2 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.3 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.4 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

3. Repeat KPI Failures and Related KPI Failures

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “**Repeat KPI Failure**”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

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

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

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4. Service Credits

- 4.1 Schedule 15 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 4.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
- 1.1.1 a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and
 - 1.1.2 a report created by the Supplier to the Authority’s senior responsible officer which summarises the Supplier’s performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the “**Balanced Scorecard Report**”).

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 1.2.1 for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- 1.2.2 a summary of all Performance Failures that occurred during the Service Period;
- 1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- 1.2.4 which Performance Failures remain outstanding and progress in resolving them;
- 1.2.5 for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.2.6 the status of any outstanding Rectification Plan processes, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- 1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.2.8 the number of Service Points awarded in respect of each KPI Failure;
- 1.2.9 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

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- 1.2.10 the conduct and performance of any agreed periodic tests that have occurred;
- 1.2.11 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- 1.2.12 such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- 1.2.13 a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- 1.2.14 the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- 1.2.15 the conduct and performance of any agreed periodic tests that have occurred in such Service Period; and

Balanced Scorecard Report

- 1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
 - 1.3.1 financial indicators;
 - 1.3.2 the Target Performance Levels achieved;
 - 1.3.3 behavioural indicators;
 - 1.3.4 performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
 - 1.3.5 performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
 - 1.3.6 Deliverable trend chart, showing the Supplier contribution to the performance of the overall programme of work across MBTP;
 - 1.3.7 sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy; and
 - 1.3.8 Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 1.5.1 take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;

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- 1.5.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - 1.5.3 be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.
- 2. **Performance Records**
 - 2.1 The Supplier shall keep appropriate documents and records (including staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
 - 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
 - 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

Annex 1: Key Performance Indicators and Subsidiary Performance Indicators

Part A: Key Performance Indicators and Subsidiary Performance Indicators Tables

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services and the Key Performance Indicators relating to Social Value are set out below:

1. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information

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[illegible]

		<div>██████████ ██████████ ██████████ ██████████</div>		<div>██████████ ██████████ ██████████</div>		
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2. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Publishable Performance Information

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[illegible]

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Part B: Definitions

1. Satisfaction Surveys

- 1.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:
 - 1.1.1 the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
 - 1.1.2 other suggestions for improvements to the Services.
- 1.2 The Authority shall reflect in the Balanced Scorecard Report any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

2. Virtual Library Completeness

- 2.1 The Virtual Library shall be complete where all of the information required under Schedule 24 (*Reports and Records Provisions*) (*Annex 3: Records To Upload To Virtual Library*) has been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

Schedule 4

Standards

Schedule 4: Standards

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

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

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

2. General

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

3. Technology and Digital Services Practice

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

4. Open Data Standards & Standards Hub

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

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

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

5. Technology Architecture Standards

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

6. Accessible Digital Standards

- 6.1 The Supplier shall comply with (or with equivalents to):
- 6.1.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.2 Conformance Level AA; and
 - 6.1.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7. Service Management Software & Standards

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- 7.1.1 ITIL v4;
 - 7.1.2 ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
 - 7.1.3 ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
 - 7.1.4 ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
 - 7.1.5 ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.
- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including, as applicable, availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

8. Sustainability

- 8.1 The Supplier shall comply with the sustainability requirements set out in Annex 1 to this Schedule 4.

9. Hardware Safety Standards

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

Annex 1: Sustainability

1. Definitions

1.1 In this Annex 1, the following definitions shall apply:

“Permitted Item”	means those items which are permissible under this Contract to the extent set out in Table B of this Annex 1;
“Prohibited Items”	means those items which are not permissible under this Contract as set out at Table A of this Annex 1;
“Sustainability Reports”	written reports to be completed by the Supplier containing the information outlined in Table C of this Annex 1; and
“Waste Hierarchy”	means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: <ul style="list-style-type: none">(a) Prevention;(b) Preparing for re-use;(c) Recycling;(d) Other Recovery; and(e) Disposal.

2. Public Sector Equality Duty

2.1 In addition to legal obligations, where the Supplier is providing a Service to which the Public Sector Equality duty applies, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

2.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

2.1.2 advance:

(a) equality of opportunity; and

(b) good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2.2 In delivering the Service, the Supplier will comply with the Authority’s equality, diversity and inclusion requirements, to be provided to the Supplier by the Authority.

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- 2.3 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

3. Environmental Requirements

- 3.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws Contract regarding the environment.
- 3.2 The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term.
- 3.3 In performing its obligations under the Contract the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Authority:
- 3.3.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
 - 3.3.2 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 3.3.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - 3.3.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal;
 - 3.3.5 in circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency; minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
 - 3.3.6 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 3.4 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 3.5 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.

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- 3.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
- 3.6.1 it is a Permitted Item; or
 - 3.6.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 3.7 The Supplier shall meet the applicable Government Buying Standards applicable to Services which can be found online at:
- <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

4. Supplier Code of Conduct

- 4.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf

- 4.2 The Authority expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

5. Reporting Requirements

- 5.1 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance:
- 5.1.1 with Paragraphs 2.1, 3.1 to 3.6, 3.7 and 4 of this Annex 1 within fourteen (14) days of such request; and
 - 5.1.2 With Paragraphs 2.2 and 2.3 of this Annex 1 within thirty (30) days of such request provided that such requests are limited to two per Contract Year.
- 5.2 The Supplier shall complete the Sustainability Report in relation to its provision of the Services under this Contract and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex 1.

Table A – Prohibited Items

The following consumer single use plastics are Prohibited Items:	Catering <ul style="list-style-type: none">(f) Single use sachets e.g. coffee pods, sauce sachets, milk sachets(g) Take away cutlery(h) Take away boxes and plates(i) Cups made wholly or partially of plastic(j) Straws(k) Stirrers(l) Water bottles
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	Facilities (m) Single use containers e.g. hand soap, cleaning products (n) Wipes containing plastic
	Office Supplies (a) Plastic envelopes (a) Plastic wrapping for brochures (b) Paper or card which is bleached with chlorine
	Packaging (c) Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products. (d) Single use carrier bags
Authority specific Prohibitions	None
Project specific Prohibitions	None

Table B – Permitted Items

Authority Permitted Items	None
Project Specific Permitted Items	None

Table C – Sustainability Reports

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

Schedule 5

Security Management

Part A: Security Assurance

1. Definitions

1.1 In this Schedule:

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	<p>an event that results, or could result, in:</p> <p>(e) any unauthorised access to or use of the Authority Data, the Services and/or the Information Management System; and/or</p> <p>(f) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract;</p>
“Certification Requirements”	means the information security requirements set out in Paragraph 6;
“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
“Higher Risk Sub-contractor”	<p>means a Sub-contractor that Processes Authority Data, where that data includes either:</p> <p>(g) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1.2; or</p> <p>(h) any part of that data includes any of the following:</p> <p>(i) financial information (including any tax and/or welfare information) relating to any person;</p> <p>(ii) any information relating to actual or alleged criminal offences (including criminal records);</p> <p>(iii) any information relating to children and/or vulnerable persons;</p>

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- (iv) any information relating to social care;
- (v) any information relating to a person's current or past employment; or
- (vi) Special Category Personal Data; or
- (i) the Authority in its discretion, designates a Sub-contractor as a Higher Risk Sub-Contractor in any procurement document related to this Contract; or
- (j) the Authority considers in its discretion, that any actual or potential Processing carried out by the Sub-contractor is high risk; and
- (k) where sensitive processes, designs or other Authority assets are shared with the Supplier

“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials PLUS”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Authority Data, the Authority, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Data Loss Events and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;
“Information Management System”	means <ul style="list-style-type: none">(a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Authority Data; and

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	(b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
“Information Security Approval Statement”	<p>means a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:</p> <p>(a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;</p> <p>(b) the Authority has accepted the residual risks; and</p> <p>(c) the Supplier may use the Information Management System to Process Authority Data;</p>
“IT Health Check”	<p>has the meaning given in Paragraph 7.1.1;</p>
“Medium Risk Sub-contractor”	<p>means a Sub-contractor that Processes Authority Data, where that data</p> <p>(d) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1.2; and</p> <p>(e) does not include Special Category Personal Data;</p> <p>and where only non-sensitive processes, designs or other Authority assets are shared with the Supplier</p>
“Process”	<p>means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;</p>
“Remediation Action Plan”	<p>has the meaning given in Paragraph 7.3.3(a);</p>
“Required Changes Register”	<p>mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date</p>

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by which such change shall be implemented and the date on which such change was implemented;

“Risk Register”

is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Authority for approval in accordance with Paragraph 4;

“Security Management Plan”

means the document prepared by the Supplier using the template in Annex 3, comprising:

- (a) the Information Assurance Assessment;
- (b) the Required Changes Register; and
- (c) the Incident Management Process;

“Special Category Personal Data”

means the categories of Personal Data set out in article 9(1) and article 10 of the UK GDPR;

2. Introduction

2.1 This Part A of this Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Authority Data and the Information Management System;
- 2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Authority Data;
- 2.1.3 the security requirements in Annex 1, with which the Supplier must comply;
- 2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term; and
- 2.1.5 the Supplier's obligations to:
 - (a) return or destroy Authority Data on the expiry or earlier termination of this Contract; and
 - (b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and
 - (c) report Breaches of Security to the Authority.

3. Principles of Security

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

- 3.1.1 the Sites;

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- 3.1.2 the IT Environment;
 - 3.1.3 the Information Management System; and
 - 3.1.4 the Services.
- 3.2 Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier implements to ensure the security of the Authority Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors; and
 - 3.2.2 the security of the Information Management System.
- 3.3 The Supplier shall:
 - 3.3.1 comply with the security requirements in Annex 1; and
 - 3.3.2 ensure that each Sub-contractor that Processes Authority Data complies with the Sub-contractor Security Requirements.
- 3.4 The Supplier shall provide the Authority with access to Supplier Personnel responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.
- 4. **Information Security Approval Statement**
 - 4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Service Commencement Date.
 - 4.2 The Supplier may not use the Information Management System to Process Authority Data unless and until:
 - 4.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider in accordance with Paragraph 7.1; and
 - 4.2.2 the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.
 - 4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Authority Data and the Information Management System.
 - 4.4 The Supplier shall prepare and submit to the Authority within 20 Working Days of the date of this Contract, the Security Management Plan, which comprises:
 - 4.4.1 an Information Assurance Assessment;
 - 4.4.2 the Required Changes Register; and

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4.4.3 the Incident Management Process.

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

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

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

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

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

4.7.1 access to the Supplier Personnel;

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

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

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

5. **Compliance Reviews**

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

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

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

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

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

5.2.4 a change in the threat profile;

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- 5.2.5 a significant change to any risk component;
 - 5.2.6 a significant change in the quantity of Personal Data held within the Service;
 - 5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 5.2.8 an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns.
- 5.3 Within 10 Working Days of such notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.
- 5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.
6. **Certification Requirements**
- 6.1 The Supplier shall be certified as compliant with:
- 6.1.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and
 - 6.1.2 Cyber Essentials PLUS,
- and shall provide the Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Authority Data.
- 6.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:
- 6.2.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or
 - 6.2.2 Cyber Essentials PLUS,
- and shall provide the Authority with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Authority Data.
- 6.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.
- 6.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data:
- 6.4.1 securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013) and Cyber Essentials PLUS; and

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- 6.4.2 should satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
- 6.4.3 must maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.
- 6.5 The Supplier shall provide the Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Authority Data.
- 6.6 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:
 - 6.6.1 immediately ceases using the Authority Data; and
 - 6.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this Paragraph.
- 6.7 The Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.
- 7. **Security Testing**
 - 7.1 The Supplier shall, at its own cost and expense procure and conduct:
 - 7.1.1 testing of the Information Management System by a CHECK Service Provider ("**IT Health Check**"); and
 - 7.1.2 such other security tests as may be required by the Authority,
 - 7.2 The Supplier shall:
 - 7.2.1 complete all of the above security tests before:
 - (a) the Supplier submits the Security Management Plan to the Authority for review in accordance with Paragraph 4; and
 - (b) before the Supplier is given permission by the Authority to Process or manage any Authority Data; and
 - 7.2.2 repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to the Authority for review in accordance with this Paragraph.
 - 7.3 In relation to each IT Health Check, the Supplier shall:
 - 7.3.1 agree with the Authority the aim and scope of the IT Health Check;
 - 7.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Authority with a copy of the full report;

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

- (a) prepare a remedial plan for approval by the Authority (each a **“Remediation Action Plan”**) which sets out in respect of each vulnerability identified in the IT Health Check report:
- (b) how the vulnerability will be remedied;
- (c) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
- (d) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;
- (e) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
- (f) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
- (g) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;
- (h) comply with the Remediation Action Plan; and
- (i) conduct such further tests on the Service as are required by the Remediation Action Plan to confirm that the Remediation Action Plan has been complied with.

7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.

7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within 2 Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Authority with a copy of the test report and:

7.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.

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7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations set out in this Schedule and the Contract.

7.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Paragraph 7.3.

8. Security Monitoring and Reporting

8.1 The Supplier shall:

8.1.1 monitor the delivery of assurance activities;

8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;

8.1.3 agree a document which presents the residual security risks to inform the Authority's decision to give approval to the Supplier to Process and transit the Authority Data;

8.1.4 monitor security risk impacting upon the operation of the Service;

8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;

8.1.6 agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within 20 Working Days of Effective Date.

9. Malicious Software

9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:

9.3.1 by the Supplier where the Malicious Software originates from:

(a) the Supplier Software;

(b) the Third Party Software supplied by the Supplier; or

(c) the Authority Data whilst the Authority Data is or was under the control of

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the Supplier,

unless, in the case of the Authority Data only, the Supplier can demonstrate that such Malicious Software was present in the Authority Data and not quarantined or otherwise identified by the Authority when the Authority provided the Authority Data to the Supplier; and

9.3.2 by the Authority, in any other circumstance.

10. Breach of Security

10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.

10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

10.2.1 Immediately take all reasonable steps necessary to:

- (a) minimise the extent of actual or potential harm caused by such Breach of Security;
- (b) remedy such Breach of Security to the extent possible;
- (c) apply a tested mitigation against any such Breach of Security; and
- (d) prevent a further Breach of Security in the future which exploits the same root cause failure;

10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Authority.

Annex 1: Security Requirements

1. Security Classification of Information

- 1.1 If the provision of the Services requires the Supplier to Process Authority Data which is classified as:
 - 1.1.1 OFFICIAL TIER (including OFFICIAL SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
 - 1.1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

- 2.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 2.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 2.1.2 users must authenticate before gaining access;
 - 2.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 2.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.
- 2.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from

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time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

- 2.3 Where there any conflict between the requirements of this Schedule 5 (*Security Management*) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

3. Encryption

- 3.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:

3.1.1 when stored at any time when no operation is being performed on it; and

3.1.2 when transmitted.

- 3.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:

3.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

3.2.2 provide details of the Protective Measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and

3.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed Protective Measures as the Authority may require.

- 3.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate Protective Measures for the unencrypted Authority Data.

- 3.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

3.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

3.4.2 the Protective Measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

- 3.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

4. Personnel Security

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

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- 4.1.1 all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including:
 - (a) verification of the individual's identity; and
 - (b) verification of the individual's nationality and immigration status; and
 - (c) verification of the individual's employment history; and
 - (d) verification of the individual's criminal record.
- 4.1.2 a Security Check clearance
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting which:
 - 4.2.1 may involve some Supplier Staff being required to obtain NPPV3; and
 - 4.2.2 where escalated or privileged access is necessary, then certain Supplier Staff will be required to obtain DV clearance
- 4.3 The level of clearance required will be identified in relation to each Workstream or any relevant Statement of Work and clearance must be achieved and Validated by the Authority as soon as practicably possible. If there is a delay in Supplier Staff securing necessary clearance due to an act or omission of the Supplier, or the relevant Supplier Staff, then the Authority may at its discretion terminate the relevant Workstream or require that the Supplier replace the relevant Supplier Staff
- 4.4 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.5 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.6 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.
- 4.7 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Authority Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Authority Data.
- 4.8 The Supplier shall ensure that the training provided to Supplier Staff under Paragraph 4.7 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Authority Data ("phishing").

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5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

6. Data Destruction or Deletion

- 6.1 The Supplier shall:
 - 6.1.1 prior to securely sanitising any Authority Data or when requested the Supplier shall provide the Government with all Authority Data in an agreed format provided it is secure and readable;
 - 6.1.2 have documented processes to ensure the availability of Authority Data in the event of the Supplier ceasing to trade;
 - 6.1.3 securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority and certify to the Authority that it has done so unless and to the extent required by Law to retain it other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
 - 6.1.4 securely destroy in a manner agreed with the Authority all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Authority other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
 - 6.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. Audit and Protective Monitoring

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

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- 7.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 7.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Security Management Plan.

8. Location of Authority Data

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

9. Vulnerabilities and Corrective Action

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
 - 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
 - 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:
 - 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be

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granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

9.4.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. Secure Architecture

10.1 The Supplier shall design the Information Management System and design and assure MBTP Systems in accordance with:

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

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

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

- (a) “Cloud Security Principle 1: data in transit protection” which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- (b) “Cloud Security Principle 2: asset protection and resilience” which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (c) “Cloud Security Principle 3: separation between users” which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (d) “Cloud Security Principle 4: governance framework” which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (e) “Cloud Security Principle 5: operational security” which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (f) “Cloud Security Principle 6: personnel security” which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;

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- (g) “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (h) “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (i) “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority’s use of the Service;
- (j) “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors; and
- (n) “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

10.3.2 the Authority’s processes, practices, tooling (software) and standards

10.4 In the provision of the Services the Supplier shall also:

- 10.4.1 minimise the technical debt and cyber technical debt in technical implementations; and
- 10.4.2 remediate any technical debt and cyber technical debt in accordance with the priority schedule agreed with the Authority; and
- 10.4.3 undertake software maintenance, patching and upgrades on at least a monthly basis and maintain all software with manufacturer support at a minimum of n-1 versions behind

10.5 The Supplier systems and practices shall be subject to audit by the Authority on an annual basis

Annex 2: Security Requirements for Sub-Contractors

1. Application of Annex 2

- 1.1 This Annex 2 applies to all Sub-contractors that Process Authority Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex 2;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Authority; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Authority Data.

2. Designing and managing secure solutions

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

3. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Authority Data outside the UK. The Authority may permit the Sub-contractor to Process Authority Data outside the UK and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must when requested to do so by the Authority:
 - 3.2.1 securely destroy Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - 3.2.2 satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 3.2.3 maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

4. Personnel Security

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

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nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

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

5. End User Devices

- 5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 5.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 5.1.2 users must authenticate before gaining access;
 - 5.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 5.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.
- 5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.
- 5.3 Where there any conflict between the requirements of this Schedule 5 (*Security Management*) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

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6. Encryption

- 6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:
 - 6.1.1 when stored at any time when no operation is being performed on it; and
 - 6.1.2 when transmitted.
- 6.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:
 - 6.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 6.2.2 provide details of the Protective Measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and
 - 6.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed Protective Measures as the Authority may require.
- 6.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate Protective Measures for the unencrypted Authority Data.
- 6.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
 - 6.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and
 - 6.4.2 the Protective Measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.
- 6.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

7. Patching and Vulnerability Scanning

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

8. Third Party Sub-contractors

- 8.1 The Sub-contractor must not transmit or disseminate the Authority Data to any other person unless specifically authorised by the Authority. Such authorisation must be in writing to be effective and may be subject to conditions.

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- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Authority Data where the licence terms of that software purport to grant the licensor rights to Process the Authority Data greater than those rights strictly necessary for the use of the software.

9. Authority Processes, Practices, Tooling & Standards

- 9.1 The Supplier and the Sub-contractor must ensure that the Sub-contractor:
- 9.1.1 uses the Authority's processes, practices, tooling (software) and standards; and
 - 9.1.2 minimises technical debt and cyber technical debt in technical implementations; and
 - 9.1.3 remediates any technical debt and cyber technical debt in accordance with the priority and schedule agreed with the Authority; and
 - 9.1.4 undertakes software maintenance, patching and upgrades on at least a monthly basis and maintains all software with manufacturer support at a minimum of n-1 versions behind.
- 9.2 The Supplier and Sub-contractor systems and practices shall be subject to audit by the Authority on an annual basis

Annex 3: Security Management Plan Template for Part A and Part B

Security Management Plan

The Supplier's Security Management Plan is held on file (on the MBTP Commercial Team's Sharepoint site, as a contract artefact), with the following document name:

"Schedule 5 – Security Management – Annex 3 Home Office Assignment Security Process 1.8.22.pdf"

Schedule 6

Insurance Requirements

Schedule 6: Insurance Requirements

1. **Obligation to Maintain Insurances**

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
 - 1.3.1 of good financial standing;
 - 1.3.2 appropriately regulated;
 - 1.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

2. **General Obligations**

- 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 the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. **Failure to Insure**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is

Schedule 6 (Insurance Requirements)

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reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of Insurances

- 4.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

5. Insurance for the Required Amount

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

6. Cancellation

- 6.1 Subject to Paragraph 7.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 7.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7. Insurance Claims, Premiums and Deductibles

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the Authority to review such register at any time.

Schedule 6 (Insurance Requirements)

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- 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 Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Annex 1: Required Insurances

Part A: Insurance Claim Notification

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this 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 Authority) full details of the incident giving rise to the claim.

Part B: Third Party Public and Products Liability Insurance

1. Insured

1.1 The Supplier

2. Interest

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

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

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3. Limit of indemnity

3.1 Not less than £5m in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £5m in the aggregate per annum in respect of products and pollution liability.

4. Territorial limits

United Kingdom

5. Period of insurance

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

6. Cover features and extensions

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

7. Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

Schedule 6 (Insurance Requirements)

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- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 8. **Maximum deductible threshold**
- 8.1 Not applicable.

Part C: United Kingdom Compulsory Insurances

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

Part D: Additional Insurances

<i>Professional Indemnity Insurance</i>	The Supplier and any agent, Subcontractor or consultant involved in the supply of the Technical Architecture Services shall hold professional indemnity insurance cover with a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit as required by Law.
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Schedule 7

Authority Responsibilities

Schedule 7: Authority Responsibilities

1. Introduction

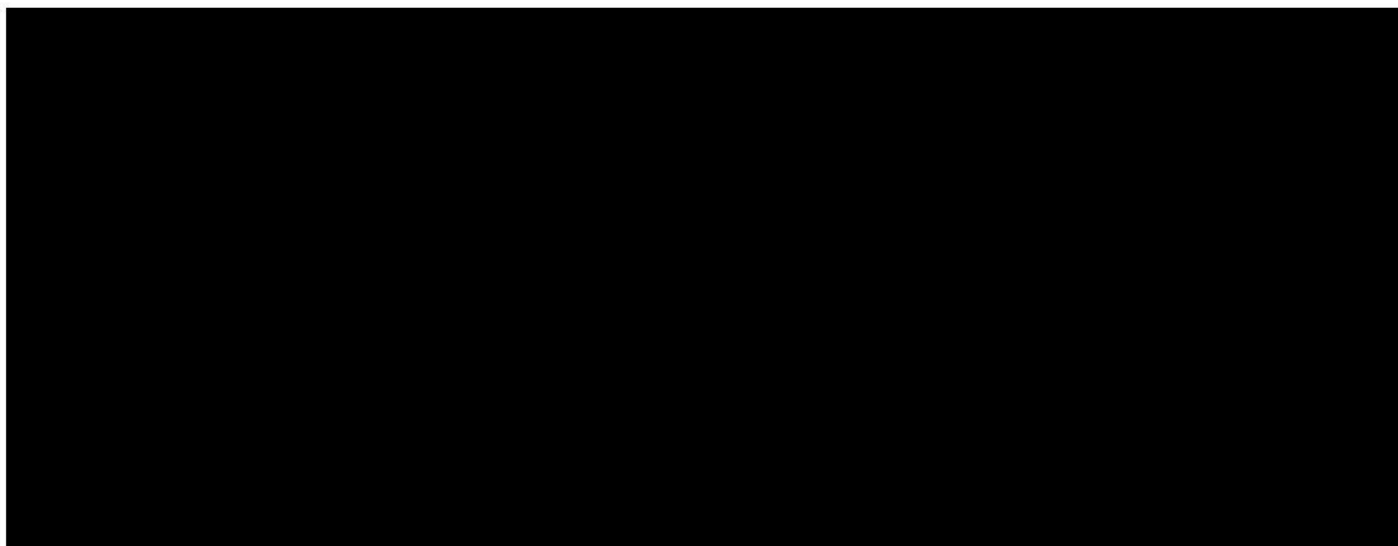
- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Contract. Any obligations of the Authority in Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2. General Obligations

- 2.1 The Authority shall:
 - 2.1.1 perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*));
 - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
 - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Contract as defined in the Implementation Plan;
 - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
 - 2.1.5 procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

3. Specific Obligations

- 3.1 The Authority shall, in relation to this Contract perform the Authority’s responsibilities identified as such in this Contract the details of which are set out below:



Further Authority responsibilities that arise during performance of the services will be captured and managed in the RAID log and subject to the standard governance processes relating to acceptance and ongoing management.

Schedule 8

Supplier Solution

Schedule 8: Supplier Solution

A reference copy of the unredacted version “MBTP Technical Architecture Services – PA Consulting MASTER” is available on the Authority’s Commercial team Sharepoint site, and an embedded PDF version is included below (note that as detailed in Schedule 9 this is considered commercially confidential information).



MBTP Technical
Architecture Services:

Schedule 9

Commercially Sensitive Information

Schedule 9: Commercially Sensitive Information

10. 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.
11. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column "Duration of Confidentiality").
12. Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 19 (*Confidentiality*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
1.	Feb 2024	-ITT Response to TQ1 · ITT Response to TQ2 · ITT Response to TQ3 · ITT Response to C1 · ITT Response to C2 · ITT Response to SV1 · ITT Response to SV2 · ITT Response to "Financial Model – Bid"	Duration of this contract plus 5 years
2.	Nov 24	Identity of professional staff and skills experience (including PA's supply chain)	Duration of this contract plus 5 years
3.	Nov 24	Fee rates for professional staff, pricing breakdown and charging mechanism, financial reports.	Duration of this contract plus 5 years
4.	Nov 24	PA Consulting Methodologies and Tools	Duration of this contract plus 5 years
5.			
6.			
7.			
8.			

Schedule 9 (Commercially Sensitive Information)
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No.	Date	Item(s)	Duration of Confidentiality
9.			
10.			
11.			
12.			
13.			
14.			
15.			

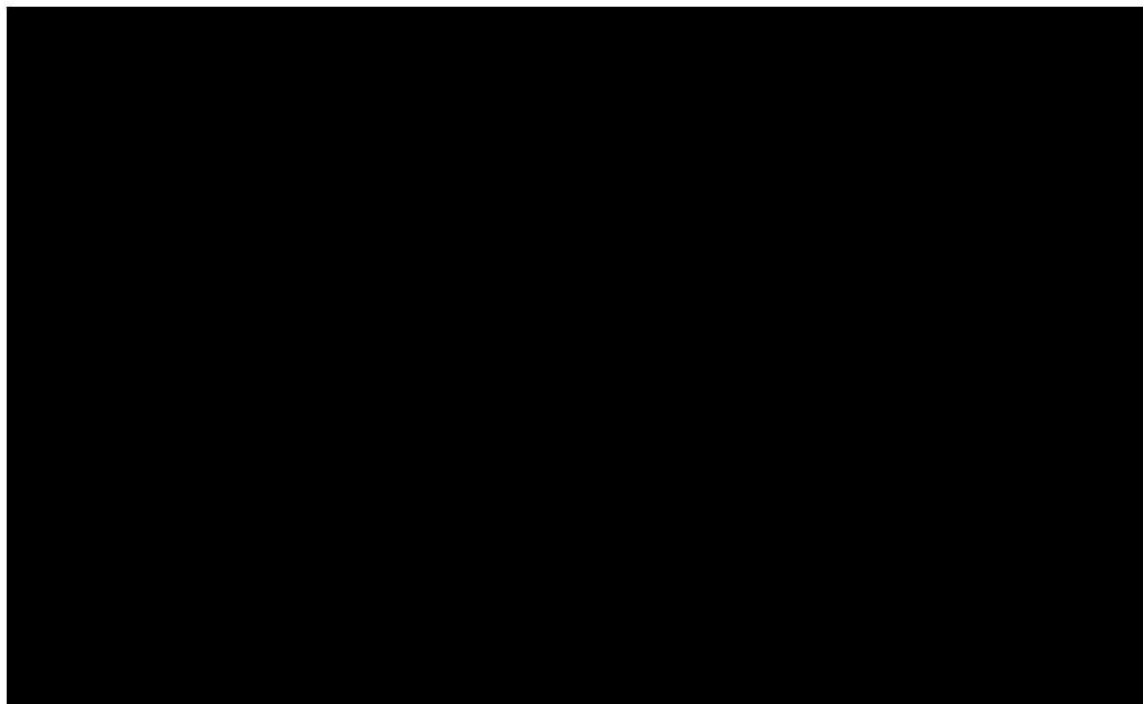
Schedule 10

Notified Key Sub-Contractors

Schedule 10: Notified Key Sub-Contractors

13. In accordance with Clause 15.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.
1. The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Date	Time	Location	Weather	Wind	Temp	Humidity	Pressure	Remarks
1901	0800	St. Louis	Clear	Light	65	70	30.0	Departed
1902	0900	St. Louis	Clear	Light	68	72	30.0	Departed
1903	1000	St. Louis	Clear	Light	70	75	30.0	Departed
1904	1100	St. Louis	Clear	Light	72	78	30.0	Departed
1905	1200	St. Louis	Clear	Light	75	80	30.0	Departed
1906	1300	St. Louis	Clear	Light	78	82	30.0	Departed
1907	1400	St. Louis	Clear	Light	80	85	30.0	Departed
1908	1500	St. Louis	Clear	Light	82	88	30.0	Departed
1909	1600	St. Louis	Clear	Light	85	90	30.0	Departed
1910	1700	St. Louis	Clear	Light	88	92	30.0	Departed
1911	1800	St. Louis	Clear	Light	90	95	30.0	Departed
1912	1900	St. Louis	Clear	Light	92	98	30.0	Departed
1913	2000	St. Louis	Clear	Light	95	100	30.0	Departed
1914	2100	St. Louis	Clear	Light	98	100	30.0	Departed
1915	2200	St. Louis	Clear	Light	100	100	30.0	Departed
1916	2300	St. Louis	Clear	Light				



Schedule 11

Third Party Contracts

Schedule 11: Third Party Contracts

2.
- The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
3.
- The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

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

Schedule 12

Software

Schedule 12: Software

Not Used .

Schedule 13

Implementation Plan

Schedule 13: Implementation Plan

1. Introduction

1.1 This Schedule:

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

2. Outline Implementation Plan

- 2.1 The Outline Implementation Plan is set out in Annex A.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 29 (*Authority Cause*)).

3. Approval of the Detailed Implementation Plan

- 3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 10 Working Days of the Effective Date.
- 3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:
 - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
 - 3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the knowledge transfer and Supplier Staff training activities for each of the Milestones:
 - (a)
 - 3.2.3 provides description of the Deliverables that will be used to evidence that knowledge transfer activities have been completed successfully and that the Technical Architecture Services have been established;
 - 3.2.4 clearly outlines the required roles and responsibilities of both Parties, including Supplier staffing requirements; and
 - 3.2.5 is produced using a software tool as specified, or agreed by the Authority.
- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
 - 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

Schedule 13 (Implementation Plan)

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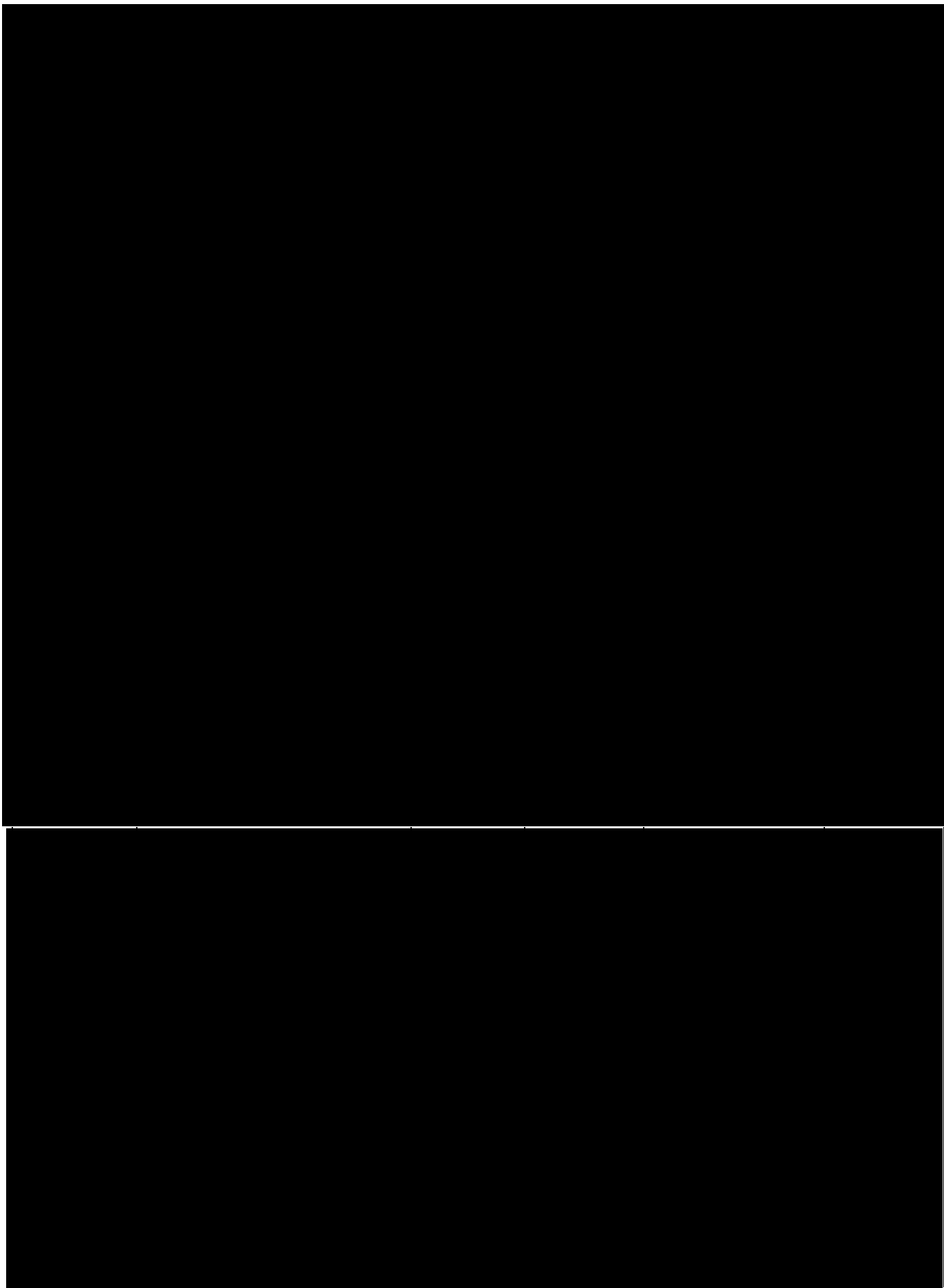
- (a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 5 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:
 - 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 5 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.
- 4. **Updates to And Maintenance of the Detailed Implementation Plan**
- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
 - 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 10 Working Days;
 - 4.1.2 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - 4.1.3 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Operational Management Board (as defined in Schedule 21 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less

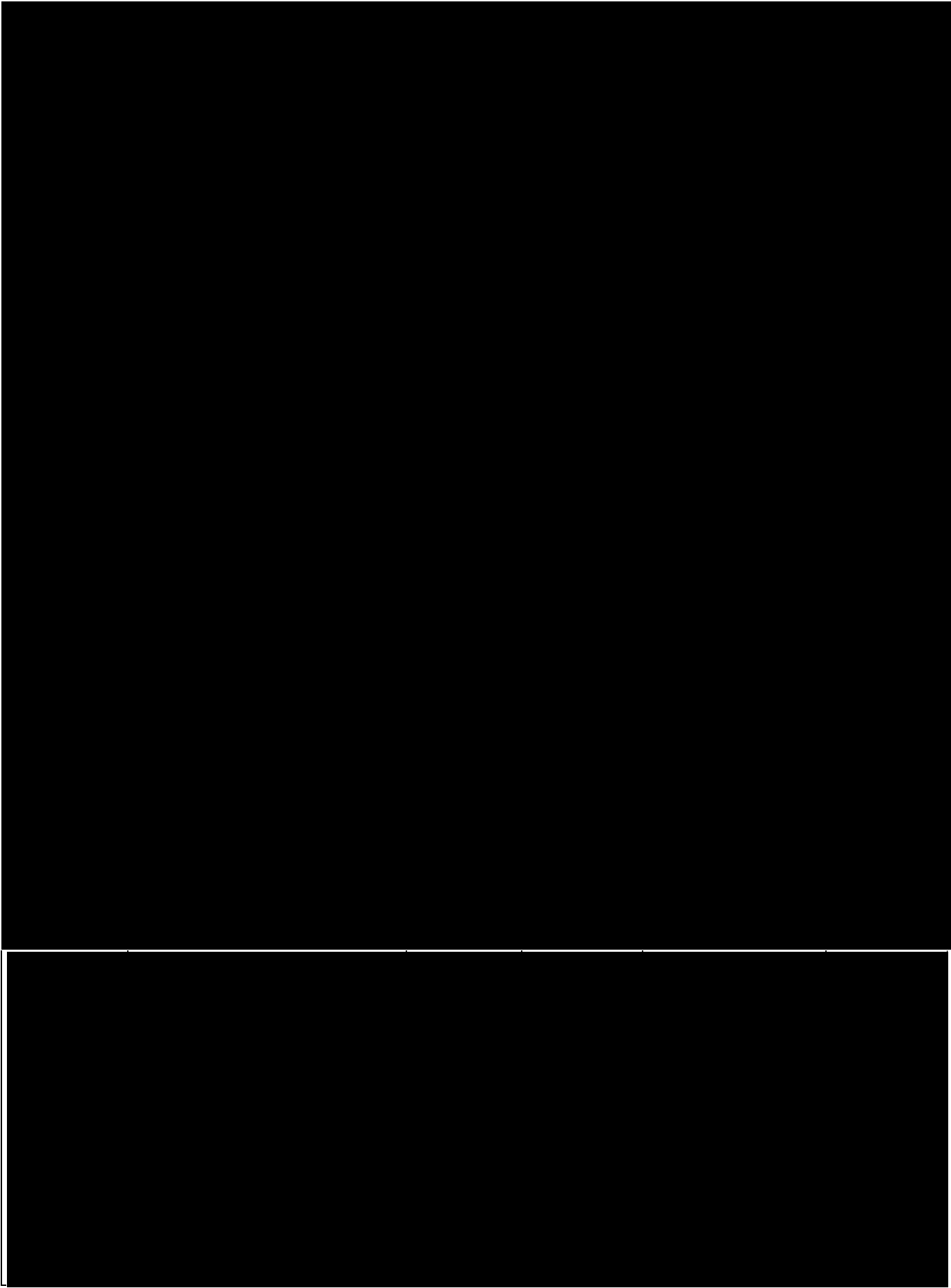
than 5 Working Days in advance of each meeting of the Operational Management Board.

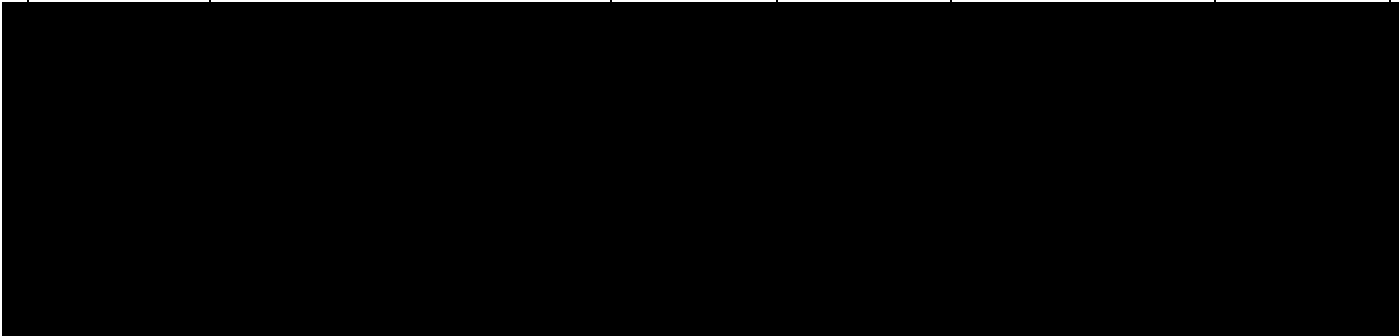
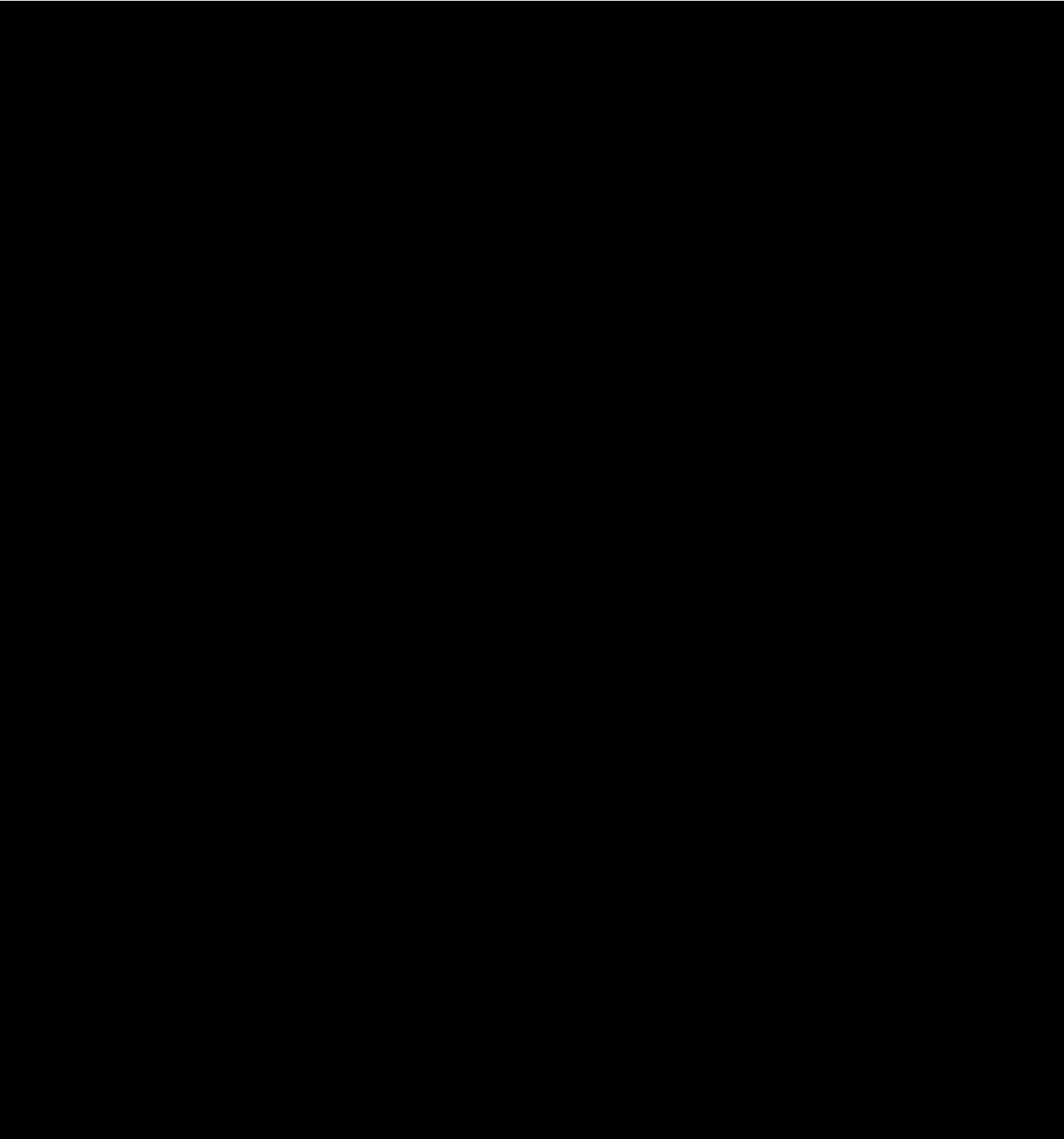
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 29 (*Authority Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.
5. **Government Reviews**
- 5.1 The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

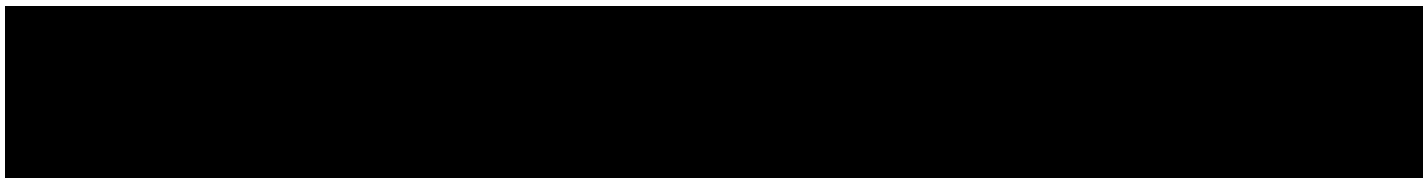
Annex A: Outline Implementation Plan

Date	Time	Location	Weather	Temperature	Humidity	Wind Speed	Wind Direction	Cloud Cover	Notes
2023-10-27	08:00	Campsite	Clear	15°C	65%	5 km/h	SE	10%	Morning routine
2023-10-27	12:00	Campsite	Clear	22°C	70%	8 km/h	SE	15%	Lunch break
2023-10-27	18:00	Campsite	Clear	18°C	75%	10 km/h	SE	20%	Evening routine
2023-10-28	06:00	Campsite	Clear	12°C	70%	5 km/h	SE	10%	Early start
2023-10-28	10:00	Campsite	Clear	20°C	75%	10 km/h	SE	15%	Morning hike
2023-10-28	14:00	Campsite	Clear	25°C	80%	12 km/h	SE	20%	Afternoon hike
2023-10-28	18:00	Campsite	Clear	18°C	75%	10 km/h	SE	20%	Evening routine
2023-10-29	07:00	Campsite	Clear	14°C	70%	5 km/h	SE	10%	Morning routine
2023-10-29	11:00	Campsite	Clear	21°C	75%	10 km/h	SE	15%	Morning hike
2023-10-29	15:00	Campsite	Clear	26°C	80%	12 km/h	SE	20%	Afternoon hike
2023-10-29	19:00	Campsite	Clear	19°C	75%	10 km/h	SE	20%	Evening routine
2023-10-30	06:00	Campsite	Clear	13°C	70%	5 km/h	SE	10%	Early start
2023-10-30	10:00	Campsite	Clear	20°C	75%	10 km/h	SE	15%	Morning hike
2023-10-30	14:00	Campsite	Clear	25°C	80%				









Schedule 14 Acceptance Procedures

Schedule 14: Acceptance Procedures

1. Risk

- 1.1 The issue of a Milestone Achievement Certificate shall not:
 - 1.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
 - 1.1.2 affect the Authority's right subsequently to reject
any Milestone to which the Milestone Achievement Certificate relates.
- 1.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
 - 1.2.1 the Services meet the Authority Requirements;
 - 1.2.2 the Services are implemented in accordance with this Contract; and
 - 1.2.3 each Target Performance Level is met from the relevant Operational Service Commencement Date.

2. Testing

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

3. Issue of Milestone Achievement Certificate & Deliverable Acceptance

- 3.1.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following performance by the Supplier to the reasonable satisfaction of the Authority of all tasks identified associated with that Milestone (which may include the submission of a Deliverable, such as the production of Documentation).
- 3.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of any payment applicable in respect of that Milestone in accordance with the provisions of Schedule 15 (*Charges and Invoicing*).
- 3.3 The Authority shall review Deliverables provided by the Supplier against the agreed Acceptance Criteria for such Deliverables on a timely basis.
- 3.4 If a Milestone or Deliverables is not Achieved, the Authority shall promptly issue a report to the Supplier setting out the reasons for the relevant Milestone or Deliverable not being Achieved.
- 3.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*) and the

Schedule 14 (Acceptance Procedures)

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Authority shall refuse, where applicable, to issue a Milestone Achievement Certificate where:

- 3.5.1 there is one or more material non-conformance with a Deliverable or the Authority's requirements in relation to a particular Milestone; or
- 3.5.2 the information required under Schedule 24 (*Reports and Records Provisions*) (Annex 3: *Records To Upload To Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

Annex 2: Deliverable Acceptance Certificate

To: [Name of Supplier]

From: [Name of Authority]

[Date]

Dear Sirs,

DELIVERABLE ACCEPTANCE CERTIFICATE

Deliverables: [insert description of Deliverables]

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

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

[We confirm that the Deliverable(s) listed above have been approved in accordance with the description and Acceptance Criteria relevant to those Deliverables.]

OR

[We confirm that the Deliverable(s) listed above have been approved in accordance with the description and Acceptance Criteria relevant to those Deliverables on the condition that the outstanding matters are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [name of Authority]

Annex 3: Milestone Achievement Certificate

To: [Name of Supplier]

From: [Name of Authority]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

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

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

[We confirm that all the Deliverables relating to Milestone [number] have been approved in accordance with the Deliverable description and Acceptance Criteria relevant to this Milestone]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 3.1 of Schedule 14 (*Acceptance Procedures*) of the Contract on the condition that any outstanding items are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [Authority]

Schedule 15

Charges and Invoicing

Schedule 15: Charges and Invoicing

4. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Achieved Supplier Margin”	the cumulative Supplier Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
“Capped ADR”	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism;
“Certificate of Costs”	a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(d) the direct cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none">(i) base salary paid to the Supplier Personnel;(ii) employer’s national insurance contributions;(iii) Employer Pension Contributions;(iv) car allowances;(v) any other contractual employment benefits;(vi)
“The Employer Pension Contributions”	<p>means:</p> <p>(a) in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (<i>annual administration charges covering core services</i>), 7.1.5 (<i>employer contributions</i>), 7.1.7 (<i>the ASLC</i>) and 7.1.8 (<i>flat charges applicable to</i></p>

the Partnership Pension Account) of the Admission Agreement;

- (b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority);
- (c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions';

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

“Supplier Bid Financial Model” Means the financial model submitted in as the Supplier’s commercial response to the MBTP Technical Architecture ITT, held on file on the Authority’s MBTP Commercial Team systems as a contract artefact with the document name “PA Consulting Financial Model – Bid.xls”

“Guaranteed Maximum Price” in relation to a Milestone, 110% of the Target Price for the relevant Milestone;

(a)

“Indexation” and “Index” the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;

“MBTP Technical Architecture ITT” The Invitation to Tender document, issued to the Supplier as part of the competition run in accordance with the Public Contracts Regulations 2015 Restricted Procedure, that formed the basis upon which the Supplier submitted its Supplier Solution (Schedule 8 of this Agreement)

“Milestone Group”	has the meaning given in Paragraph 1.3.3 of Part B;
“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority’s expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none">(b) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and(a) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supplier Margin”	in relation to the Supplier Charges, the difference between the Supplier Charge(s) and the Cost(s) associated with such Charge(s) divided by the Supplier Charge(s) and expressed as a percentage as set out in the Financial Model;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5;
“Work Day”	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and

“Work Hours”

the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier’s offices, or to and from the Sites) but excluding lunch breaks.

Part A: Pricing

1. Applicable Pricing Mechanism

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
 - 1.2.1 **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - 1.2.2 **“Guaranteed Maximum Price with Target Cost”**, in which case the provisions of Paragraph 3 shall apply;
 - 1.2.3 **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
 - 1.2.4 **“Firm Price”**, in which case the provisions of Paragraph 5 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
 - 1.3.1 **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - 1.3.2 **“Volume Based”** pricing, in which case the provisions of Paragraph 6 shall apply; or
 - 1.3.3 **“Fixed Price”** in which case the provisions of Paragraph 4 shall apply.

2. Time and Materials Milestone Payments or Service Charges

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
 - 2.1.1 the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (a) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (b) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed; and
 - (c) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier’s obligation to deliver the Services in a proportionate and efficient manner; and

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

2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Annex 1 shall not be subject to Indexation.

3. **Guaranteed Maximum Price with Target Cost Incentive Milestone Payments**

3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Annex 1.

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

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

TP is the Target Price for the relevant Milestone;

TC is the Target Cost for the relevant Milestone; and

IC is the Incurred Costs relating to the relevant Milestone.

3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Annex 1 (the "**Guaranteed Maximum Price**") represented numerically:

3.3.1 if:

(a) $\text{IC} > \text{TC}$; and

(b) $\text{TP} + ((\text{IC} - \text{TC})/2) < \text{GMP}$,

then Milestone Payment = $\text{TP} + ((\text{IC} - \text{TC})/2)$; or

3.3.2 if:

(a) $\text{IC} > \text{TC}$; and

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$$(b) \quad TP + ((IC - TC)/2) \geq GMP,$$

then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone;

TC is the Target Cost for the relevant Milestone;

TP is the Target Price for the relevant Milestone; and

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

- 3.4 The Supplier shall be entitled to Index the day costs set out in Table 3 of Annex 1 annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

4. Fixed Price Milestone Payments or Service Charges

- 4.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.
- 4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to adjustment by way of Indexation.

5. Firm Price Milestone Payments

- 5.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.
- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to adjustment by way of Indexation.

6. Volume Based Service Charges

- 6.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.
- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Annex 1 shall be subject to annual Indexation.

7. Reimbursable Expenses

7.1 Where:

7.1.1 Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and

7.1.2 the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

7.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

7.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

7.3.2 any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

Part B: Charging Mechanisms

1. Milestone Payments

- 1.1 On the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for any Milestone Payment associated with that Milestone.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
 - 1.2.1 a Milestone Achievement Certificate; and
 - 1.2.2 where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs and/or Supporting Documentation as applicable.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.3 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
 - 1.3.1 upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
 - 1.3.2 no later than 60 Working Days after the invoice referred to in Paragraph 1.3.1 has been issued, the Supplier shall:
 - (a) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (b) issue to the Authority an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);
 - (c) where a credit note is to be issued to the Authority pursuant to Paragraph 1.3.2(b), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.
 - 1.3.3 Where Milestones are stated in Table 4 of Annex 1 to constitute a group of Milestones (a "**Milestone Group**") and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
 - 1.3.4 in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the

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associated Milestone Achievement Certificate; and

- 1.3.5 no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
- (a) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (b) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (c) where a credit note is to be issued to the Authority pursuant to Paragraph 1.3.5(b), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.4 If the Supplier does not repay any such sum as is referred to in Paragraph 1.3.2(b) or 1.3.5(b) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.5 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.3.2(c) or 1.3.5(c), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.7.

2. Service Charges

2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Annex 2.

2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.

2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:

2.3.1 commences on a day other than the first day of a month; and/or

2.3.2 ends on a day other than the last day of a month,

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

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

Part C: Adjustments To The Charges And Risk Register

1. Service Credits

1.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 3 (Performance Levels).

1.2 For each Service Period:

1.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 0.1% deduction in the Service Charges; and

1.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times x \times AC$$

where:

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

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

X is 0.1%; and

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

1.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 23.4.3(*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 3 (*Performance Levels*).

1.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

1.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

2. Changes to Charges

2.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 22 (*Change Control Procedure*) and on the basis that the Supplier Margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report).

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- 2.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.
- 2.3 Note: in relation to 2.1 above, due to the uncertainty at contract signature regarding whether staff transfer from the predecessor Supplier applies under the prevailing TUPE regulations, the Authority will act in good faith, and in accordance with the information provided in the MBTP Technical Architecture ITT in relation to any reasonable adjustment to the Charges, if as a result of staff transfer from the Incumbent supplier, the Costs (as defined in Schedule 15) is higher. The basis of any increase will also include Supplier Margin as stated in paragraph 2.1
3. **Indexation**
- 3.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be subject to adjustment in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.
- 3.2 Notwithstanding any other provisions of this Schedule, amounts or sums in this Contract shall not be subject to Indexation during the first year following the Operational Service Commencement Date (the “**Non-Indexation Period**”).
- 3.3 Where any amount or sum in this Contract is stated to be “subject to Indexation” then it will be subject to adjustment (which may result in an increase or decrease in the amount or sum, in accordance with the process set out below) on the first day of the April which is at least one year after the end of the Non-Indexation Period, and each subsequent 1 April thereafter.
- 3.4 The maximum adjustment (“**Maximum Adjustment**”) (increase or decrease) shall be determined by multiplying the relevant amount or sum by the percentage change in the Consumer Price Index including owner occupiers' housing costs (CPIH) published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 3.5 The actual adjustment for any increase in the Charges shall be subject to the demonstration by the Supplier, to the reasonable satisfaction of the Authority, of the level of actual underlying cost increases that necessarily have occurred in relation to the provision of the Services over the preceding 12 month period (the “**Actual Increase**”) and shall be applied as follows:
- 3.5.1 where the Actual Increase is the same or greater than the Maximum Adjustment then the Maximum Adjustment shall apply; or
- 3.5.2 where the Actual Increase is greater than zero but less than the Maximum Adjustment the Actual Increase shall apply; or
- 3.5.3 where the Supplier is unable to demonstrate that the Actual Increase is greater than zero then no adjustment shall apply
- 3.6 The actual adjustment for any decrease in the Charges shall be subject to the reasonable demonstration by the Authority of the level of underlying cost decreases that should have occurred in relation to the provision of the Services over the preceding 12 month period (the “**Actual Decrease**”) and shall be applied as follows:

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- 3.6.1 Where the Actual Decrease is the same or a greater decrease than the Maximum Adjustment then the Maximum Adjustment shall apply; or
 - 3.6.2 Where the Actual Decrease is a smaller decrease than the Maximum Adjustment the Actual Decrease shall apply
- 3.7 Except as set out in this Paragraph 3, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.
- 3.8 Where the price index referred to in Paragraph 3.4:
 - 3.8.1 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; or
 - 3.8.2 is no longer published, the Buyer and the Supplier shall agree an appropriate replacement index which shall cover to the maximum extent possible the same economic activities as the original index.
- 4. **Risk Register**
 - 4.1 A Risk Register in the form as set out in Annex 4 may be included as part of the DARP, subject to agreement of the content by the Authority, and in such event shall be reviewed by the parties from time to time and as otherwise required for the purposes of Schedule 21 (*Governance*).

Part D: Excess Supplier Margin

1. Limit on Supplier Margin

- 1.1 The Supplier acknowledges that the Achieved Margin applicable over the Term shall not exceed the Supplier Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Supplier Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 19 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2. Adjustment to the Charges in the Event of Excess Supplier Margin

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 19 (*Financial Reports and Audit Rights*)) that the Achieved Supplier Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Supplier Margin:
 - 2.1.1 the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Supplier Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Supplier Margin;
 - 2.1.2 the Authority (acting reasonably) may agree or reject the proposed adjustments;
 - 2.1.3 if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - 2.1.4 if the Parties cannot agree such revised adjustments and the Authority terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 31.1.1 (*Termination by the Authority*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

Part E: Invoicing and Payment Terms

1. Supplier Invoices

- 1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
 - 1.2.1 comply with the requirements of the Authority's e-invoicing system;
 - 1.2.2 prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 1.2.3 make such amendments as may be reasonably required by the Authority if the template invoice outlined in 1.2.2 is not approved by the Authority.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
 - 1.3.1 the date of the invoice;
 - 1.3.2 a unique invoice number;
 - 1.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.3.4 the correct reference for this Contract;
 - 1.3.5 the reference number of the purchase order to which it relates (if any);
 - 1.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.3.7 a description of the Services;
 - 1.3.8 the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials);
 - 1.3.9 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.3.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.3.11 details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - 1.3.12 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports

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

- 1.3.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - 1.3.14 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - 1.3.15 where the Services have been structured into separate Service lines, the information at 1.3.1 to 1.3.14 of this Paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation to HOSupplierInvoices@homeoffice.gov.uk .
- 1.7 with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 1.8 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.9 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.10 If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.10, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 after a reasonable time has passed.

2. **Payment Terms**

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

Annex 1: Pricing Mechanism

1. Table 1: Supplier Personnel Rate Card for Calculation of Time and Materials Charges

Staff Grade	Day Rate (£)
SFIA 3	As set out in Financial Model
SFIA 4	As set out in Financial Model
SFIA 5	As set out in Financial Model
Transferred Staff SFIA 3-5 Average	As set out in Financial Model

2. Table 2: Maximum Time and Materials Charges

Charge Number	Maximum Time and Materials Charges (the cap) (£)
Technical Architecture Services	
Technology Governance & Catalogue Services	[Days x Day Rate as per latest agreed DARP]
Enterprise Architecture Services	[Days x Day Rate as per latest agreed DARP]
Programmes & Products Services	[Days x Day Rate as per latest agreed DARP]

3. Table 3: Day Cost for Calculation of Guaranteed Maximum Price with Target Cost Charges

4. Table 4: Guaranteed Maximum Price with Target Costs Charges

5. Table 5: Fixed Prices – To be agreed as part of each Statement of Work

[illegible]

Charge	Fixed Charge (£)

- 6. Table 6: Firm Prices
- 7. Table 7: Volume Charges

Annex 2: Charging Mechanism and Adjustments

Not used.

Annex 3: Pro-forma Certificate of Costs

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

[insert details of Milestone/Milestone Group]

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

Signed [Director of Finance or equivalent]

[Name of Supplier]

Annex 4: Risk Register (or such other form as specified in the RAID log)

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

Schedule 15 (Charges and Invoicing)

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Schedule 16

Payments on Termination

Schedule 16: Payments on Termination

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel”	<p>any Supplier Personnel who:</p> <ul style="list-style-type: none">(a) at the Termination Date:<ul style="list-style-type: none">(i) are employees of the Supplier;(ii) are Dedicated Supplier Personnel;(iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and(b) are dismissed or given notice of dismissal by the Supplier within:<ul style="list-style-type: none">(i) 40 Working Days of the Termination Date; or(ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and(c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and(d) the Supplier can demonstrate to the satisfaction of the Authority:<ul style="list-style-type: none">(i) are surplus to the Supplier’s requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;(ii) are genuinely being dismissed for reasons of redundancy; and(iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;
“Breakage Costs Payment”	<p>an amount equal to the Redundancy Costs as at the Termination Date as determined in accordance with Paragraph 3;</p>

“Compensation Payment”	the payment calculated in accordance with Paragraph 9;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none">(a) any statutory redundancy payment; and(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 31.1.1 (<i>Termination by the Authority</i>) to terminate this Contract for convenience on a specified Termination Date;
“Shortfall Period”	has the meaning given in Paragraph 8.2;
“Termination Estimate”	has the meaning given in Paragraph 13.2;

“Unrecovered Costs” the Supplier shall have no Costs incurred in the performance of this Contract that would not be recovered through any Compensation Payment due and as such the amount of the Unrecovered Costs shall in all cases be zero.;

(c)

2. Termination Payment

2.1 The Termination Payment payable pursuant to Clause 32.4.1 (*Payments by the Authority*) shall be an amount equal to the Breakage Costs Payment.

3. Breakage Costs Payment

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

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

4. Limitation on Breakage Costs Payment

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

- 4.1.1 the relevant limit set out in Annex 1; and
- 4.1.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

5. Redundancy Costs

5.1 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

5.2 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per

Schedule 16: (Payments on Termination)

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relevant member of the Supplier Personnel.

6. **Contract Breakage Costs**

6.1 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

6.1.1 are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 25 (*Exit Management*); and

6.1.2 the Supplier can demonstrate:

(a) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

(b) have been entered into by it in the ordinary course of business.

6.2 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

6.3 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

6.3.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Contract; and/or

6.3.2 Assets not yet installed at the Termination Date.

7. **Mitigation of Contract Breakage Costs, Redundancy Costs and Unrecovered Costs**

7.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

7.1.1 the appropriation of Assets, employees and resources for other purposes;

7.1.2 at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and

7.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

7.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 23 (*Dispute Resolution Procedure*).

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8. Compensation Payment

8.1 The Compensation Payment payable pursuant to Clause 32.4.2 (*Payments by the Authority*) shall be an amount equal to the total Charges that would otherwise have fallen due over the Shortfall Period in accordance with the DARP.

8.2 For the purposes of Paragraph 8.19.1, the “**Shortfall Period**” means:

8.2.1 where the Authority terminates this Contract pursuant to Clause 31.1.1 (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1.1 of Part D of Schedule 15 (*Charges and Invoicing*)) falls short of sixty (60) days; or

8.2.2 where the Supplier terminates this Contract pursuant to Clause 31.3.1 (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 60 days,

9. Full and Final Settlement

9.1 Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3.1 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

10. Invoicing for the Payments on Termination

10.1 All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 15 (*Charges and Invoicing*).

11. Set Off

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

12. No Double Recovery

12.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 25 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

12.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

12.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

13. Estimate of Termination Payment and Compensation Payment

13.1 The Authority may issue a Request for Estimate at any time during the Term provided

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that no more than 2 Requests for Estimate may be issued in any 6 month period.

- 13.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:

13.2.1 include:

- (a) details of the mechanism by which the Termination Payment is calculated;
- (b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
- (c) such information as the Authority may reasonably require; and

13.2.2 state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

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

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

Schedule 17

Benchmarking

Schedule 17: Benchmarking

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker’s professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8.1 and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
“Good Value”	in relation to a Benchmarked Service, that: (d) having taken into account the Performance Indicators and Target Performance Levels, the value for money of the Charges attributable to that Benchmarked Service is

at least as good as the value for money of the Upper Quartile; and

- (e) any Performance Indicators and Target Performance Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

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

2. Frequency, Purpose and Scope of Benchmark Review

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

3. Appointment of Benchmarkers

- 3.1 The Authority shall appoint as the Benchmarkers to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarkers to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarkers and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarkers shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarkers' costs and expenses in full and to recover the Supplier's share from the Supplier.

4. Benchmark Review

- 4.1 The Authority shall require the Benchmarkers to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarkers, or such longer period as the Benchmarkers shall reasonably request in all the circumstances. The plan must include:

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- 4.1.1 a proposed timetable for the Benchmark Review;
 - 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group;
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - 4.1.8 if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a Material Default for the purposes of Clause 25.1.3 (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

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- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
 - 4.8.1 finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - 4.8.2 derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - 4.8.3 derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - 4.8.4 derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - 4.8.5 compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Performance Levels) to the value for money of the Upper Quartile;
 - 4.8.6 compare the Performance Indicators and Target Performance Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - 4.8.7 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
 - 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Supplier;
 - 4.9.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - 4.9.4 the extent of the Supplier's management and contract governance responsibilities;
 - 4.9.5 any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5. Benchmark Report

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - 5.1.4 illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (subject to demonstration of such loss to the Authority by the Supplier through direct reference to actual cost information and the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:

- 5.8.1 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- 5.8.2 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
- (a) the Supplier shall immediately implement the relevant changes;
 - (b) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (c) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.
- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

Annex 1: Approved Benchmarkers

Not used.

Annex 2: Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1. Interpretation

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

“Confidential Information”

means:

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

Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

- (a) Information derived from any of the above, but not including any Information that:
- (b) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;
- (c) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;
- (d) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (e) was independently developed without access to the Confidential Information;

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

“Permitted Purpose” has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

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

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

3. Permitted Disclosures

3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- 3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
- 3.1.2 have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
- 3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of this Schedule 17 (*Benchmarking*) to the Contract.

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- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - 3.4.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.4.2 ask the court or other public body to treat the Confidential Information as confidential.

4. General

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

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- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- 5.2.1 if to be given to the Supplier shall be sent to:
- [Address]
- Attention: [Contact name and/or position, e.g. “The Finance Director”]
- 5.2.2 if to be given to the Benchmarker shall be sent to:
- [Name of Organisation]
- [Address]
- Attention: []

6. Governing law

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

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

For and on behalf of [name of Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Benchmarker]

Signature: _____

Date:

Name:

Position:

Schedule 18

Financial Distress

Schedule 18: Financial Distress

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Accounting Reference Date”	means in each year, the date to which each entity in the FDE Group prepares its annual audited financial statements;
“Applicable Financial Indicators”	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 6 of this Schedule;
“Appropriate Accepted Mitigation”	<p>means a mitigation to a Financial Distress Event as agreed between the Parties, as follows:</p> <p>(a) as at the Effective Date, as set out in Annex 2 of this Schedule; and</p> <p>(b) during the term of the Contract, as set out in Paragraph 3.4 of this Schedule.</p> <p>All Appropriate Accepted Mitigations, including any new or amended Appropriate Accepted Mitigations must be documented and recorded in a format and location agreed between the Parties, (for example, in a dedicated and access-controlled area of the Virtual Library);</p>
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
“Credit Rating Level”	means a credit rating level as specified in Annex 1 of this Schedule;
“Credit Rating Threshold”	means the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 3 of this Schedule;
“Financial Distress Event” or “FDE”	means the occurrence of one or more events as listed in Paragraph 3.1 of this Schedule;
“Financial Distress Event Group” or “FDE Group”	means the Supplier, Key Sub-contractors, the Guarantor, the Supplier’s ultimate Parent

Schedule 18: (Financial Distress)

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Undertaking, Key Sub-contractors' ultimate Parent Undertakings, and the Monitored Suppliers;

“Financial Indicators” in respect of the Supplier, Key Sub-contractors, the Guarantor, the Supplier's ultimate Parent Undertaking, the Key Sub-contractors' ultimate Parent Undertakings, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;

“Financial Target Thresholds” means the target thresholds for each of the Financial Indicators set out at Paragraph 5.1 of this Schedule;

“Monitored Suppliers” means those entities specified at Paragraph 6 of this Schedule;

“Primary Credit Ratings” means Dun & Bradstreet credit ratings;

“Primary Credit Ratings Agency” means Dun & Bradstreet

“Rating Agencies” means the rating agencies listed in Annex 1 of this Schedule or such other rating agencies as the Authority may decide to use;

2. Warranties and Duty to Notify

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

2.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 3 of this Schedule; and

2.1.2 either

(a) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor, Supplier's ultimate Parent Undertakings, Key Sub-contractors and Key-subcontractors' ultimate Parent Undertakings satisfies the Financial Target Thresholds, or

(b) the relevant Appropriate Accepted Mitigations are in place.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by the Primary Credit Ratings Agency for any entity in the FDE Group, which results in the the level of risk being assessed as high or greater than average (and in any event within 5 Working

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Days of the occurrence of the downgrade). The categorisation of credit ratings by risk level is defined in Annex 1.

2.3 The Supplier shall:

- 2.3.1 regularly monitor the credit ratings of each entity in the FDE Group with the Primary Credit Rating Agency;
- 2.3.2 monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least Quarterly, and update the Financial Indicators when public information becomes available, and in any event no less than once a year within 285 days after the Accounting Reference Date;
- 2.3.3 provide regular Updates to the Authority on, as a minimum, the Primary Credit Ratings for each entity in the FDE Group; promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event); and
- 2.3.4 ensure when complying with this paragraph 2.3 that it complies with the law of England and Wales, including all regulations and local law that applies to England and Wales

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provision of Paragraph 3.1.1, , the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:

- 2.4.1 any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
- 2.4.2 a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 3 of this Schedule ceases to hold or is unable to provide a Credit Rating for that entity, and the Supplier fails to provide an acceptable explanation to the Authority.

2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3.2 shall:

- 2.5.1 be a single report with separate sections for each of the FDE Group entities;
- 2.5.2 contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
- 2.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- 2.5.4 be based on the audited accounts or any other publicised financial information for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and

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- 2.5.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3. Financial Distress Events

- 3.1 The following shall be Financial Distress Events, unless an Appropriate Accepted Mitigation is in place:
 - 3.1.1 the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
 - 3.1.2 an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
 - 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
 - 3.1.4 an FDE Group entity committing a material breach of covenant to its lenders;
 - 3.1.5 a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
 - 3.1.6 any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Authority which the Authority (acting reasonably) considers to be adequate;
 - 3.1.7 any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Authority which the Authority, acting reasonably, considers to be adequate;
 - 3.1.8 the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
 - 3.1.9 any of the following:
 - (a) any FDE Group entity makes a public announcement which contains adverse commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
 - (b) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (c) non-payment by an FDE Group entity of any financial indebtedness;
 - (d) any financial indebtedness of an FDE Group entity becoming due as a

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result of an event of default;

- (e) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
- (f) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

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

3.1.10 any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold; or

3.1.11 if a previously Appropriate Accepted Mitigation is no longer available for a particular FDE or is no longer sufficient to constitute an Appropriate Accepted Mitigation

3.2 On the occurrence of an FDE pursuant to Paragraph 3.1(a) to (h):

3.2.1 the Supplier shall:

- (a) notify the Authority in accordance with Paragraph 2.3(d) above; and
- (b) provide to the Authority in writing within 10 Working Days or as otherwise agreed between the Parties of the date on which the Supplier first becomes aware of the FDE or of the date on which the Authority has brought the FDE to the Supplier's attention, its proposed mitigation; and

3.2.2 the Parties shall then discuss the proposed mitigation in good faith and the Authority shall, as soon as practicable, either:

- (a) agree that the proposed mitigation constitutes an Appropriate Accepted Mitigation; or
- (b) exercise its rights under Paragraph 4 of this Schedule.

3.3 Failure by the Authority to exercise its rights under Paragraph 4 of this Schedule shall constitute acceptance of the Appropriate Accepted Mitigation, unless such failure was due to an act or omission of the Supplier.

3.4 For the purposes of this Paragraph 3 Appropriate Accepted Mitigations include:

3.4.1 For the Supplier:

- (a) the existence of a valid Guarantee provided by [a Parent Undertaking] as Guarantor; and
- (b) the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and

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- (c) the Supplier's ultimate Parent Undertaking is not subject to an FDE for which there is no Appropriate Accepted Mitigation.

3.4.2 For Sub-contractors:

- (a) The existence of a Guarantee provided by [a Parent Undertaking] as Guarantor: and
- (b) the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and
- (c) the Sub-contractor's ultimate Parent Undertaking is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and

3.4.3 For all entities within the FDE Group:

- (a) a mitigation that reduces the level of risk of the FDE to a level acceptable to the Authority. This may include access to sufficient unused credit facilities or other risk mitigations, as listed in the Outsourcing Playbook 'Assessing and Monitoring the Economic and Financial Standing of Suppliers' Guidance note available at: [Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf](https://publishing.service.gov.uk/guidance/assessing-and-monitoring-the-economic-and-financial-standing-of-suppliers-guidance-note-May-2021) (publishing.service.gov.uk).

- 3.5 All Appropriate Accepted Mitigations including any new or amended Appropriate Accepted Mitigations will be documented and recorded in a format and location agreed between the Parties (for example in a dedicated and access-controlled area of the Virtual Library).

4. Consequences of Financial Distress Events

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event in accordance with paragraph 2.3.4 (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), and subject to paragraph 3, the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

- 4.2 In the event of the first instance within a rolling 3-month period, of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1, the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

- 4.2.1 rectify such late or non-payment; or

- 4.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor, Key Sub-contractor, and any relevant Parent Undertaking (for the Supplier or Key-subcontractor) shall):

- 4.3.1 at the request of the Authority, meet the Authority as soon as reasonably

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practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

4.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1 that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

(a) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing). This draft should be consistent with any Service Continuity Plan required under Schedule 26 (Service Continuity Plan and Corporate Resolution Planning); and

(b) to the extent that it is legally permitted to do so and subject to Paragraph 8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors, the Guarantor, and any relevant Parent Undertaking (for the Supplier or Key-subcontractor) as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event and other information which may be price sensitive.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:

4.4.1 approved by the Authority;

4.4.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or

4.4.3 finally rejected by the Authority.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the

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draft Financial Distress Remediation Plan using the Dispute Resolution Procedure

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

4.6.1 on a regular basis (which shall not be less than fortnightly):

- (a) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
- (b) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

4.6.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6.1, submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.6.1 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

4.6.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3.2(b) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

- 4.8.1 obtaining in advance written authority from Key Sub-contractors, the Guarantor, Monitored Suppliers, and any relevant Parent Undertaking (for the Supplier or Key-subcontractor) authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
- 4.8.2 agreeing in advance with the Authority, Key Sub-contractors, the Guarantor, Monitored Suppliers, and any relevant Parent Undertaking (for the Supplier or Key-subcontractor) a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
- 4.8.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include (without limitation)

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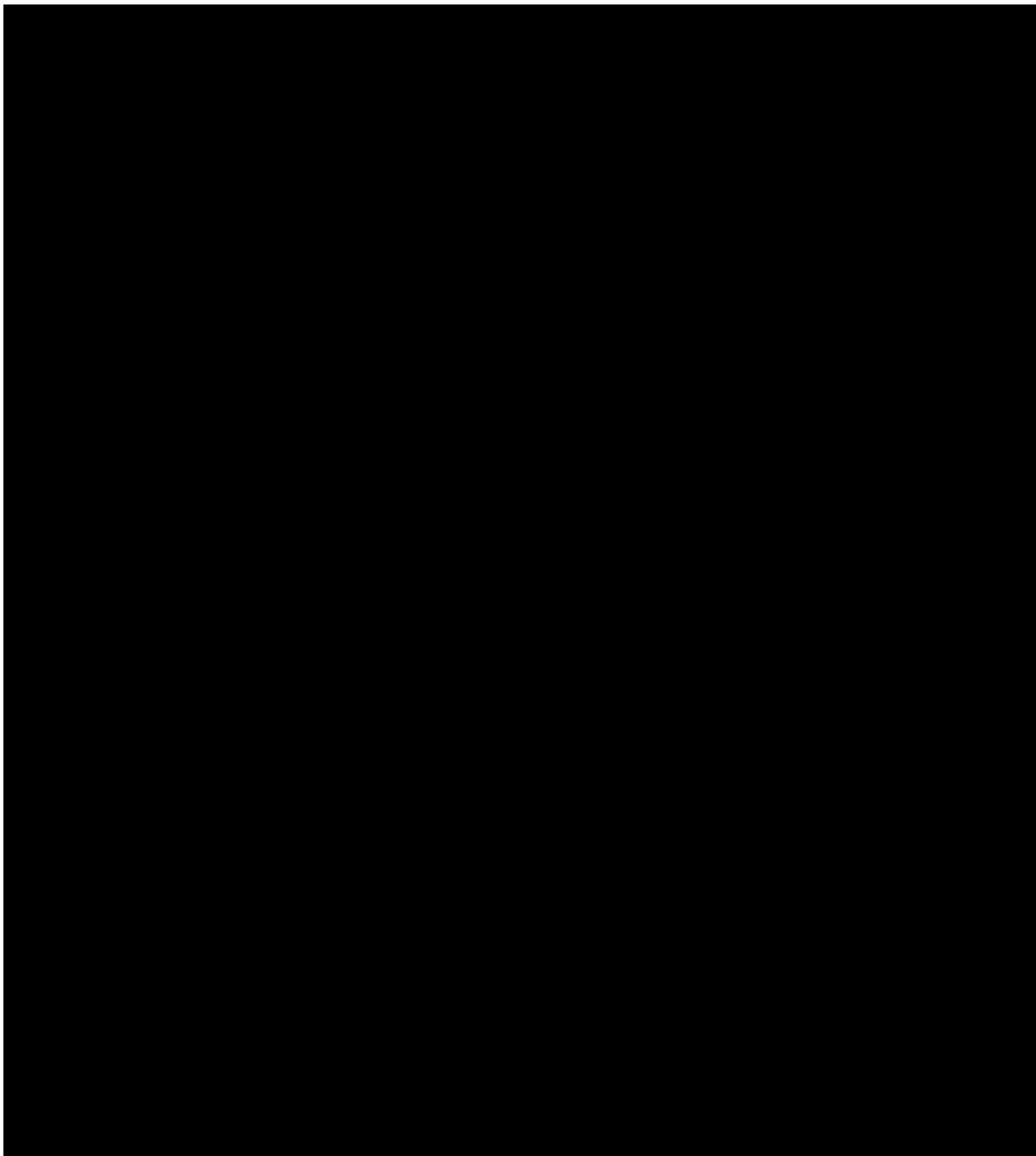
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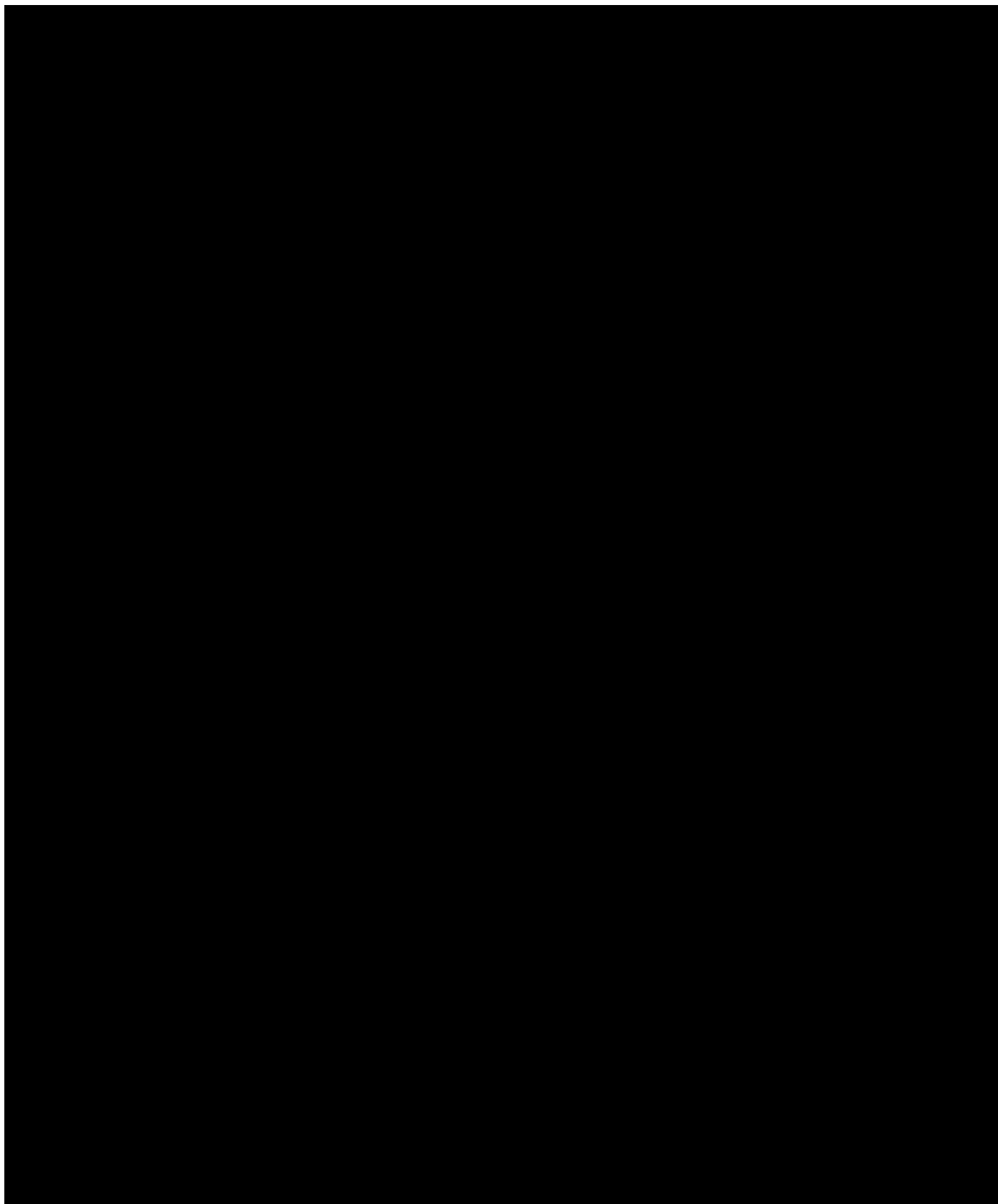
making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

- 4.8.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5. Financial Indicators

- 5.1 Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:





Key: ¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

6. Monitored Suppliers

6.1 Monitored Suppliers shall be designated at contract signature.

6.2 A Monitored Supplier could include any Sub-contractor that is not a key subcontractor, which in the opinion of the Authority, performs (or would perform if appointed) a role:

- 6.2.1 in the provision of all or any part of the Services that is such that the discontinued provision of that role would be detrimental to the ability of the Supplier to deliver the Services to its established performance Standards; and/or
- 6.2.2 in the provision of all or any part of the Services that is such that the discontinued provision of that role may affect the Supplier's financial stability; and/or
- 6.2.3 for which it would be difficult for the Supplier to find a replacement Sub-contractor within a reasonable time.

Monitored Supplier	Applicable Financial Indicators (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers)
N/A	N/A

7. Termination Rights

7.1 The Authority shall be entitled to terminate this Contract under Clause 31.1.2(*Termination by the Authority*) if:

- 7.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3.3;

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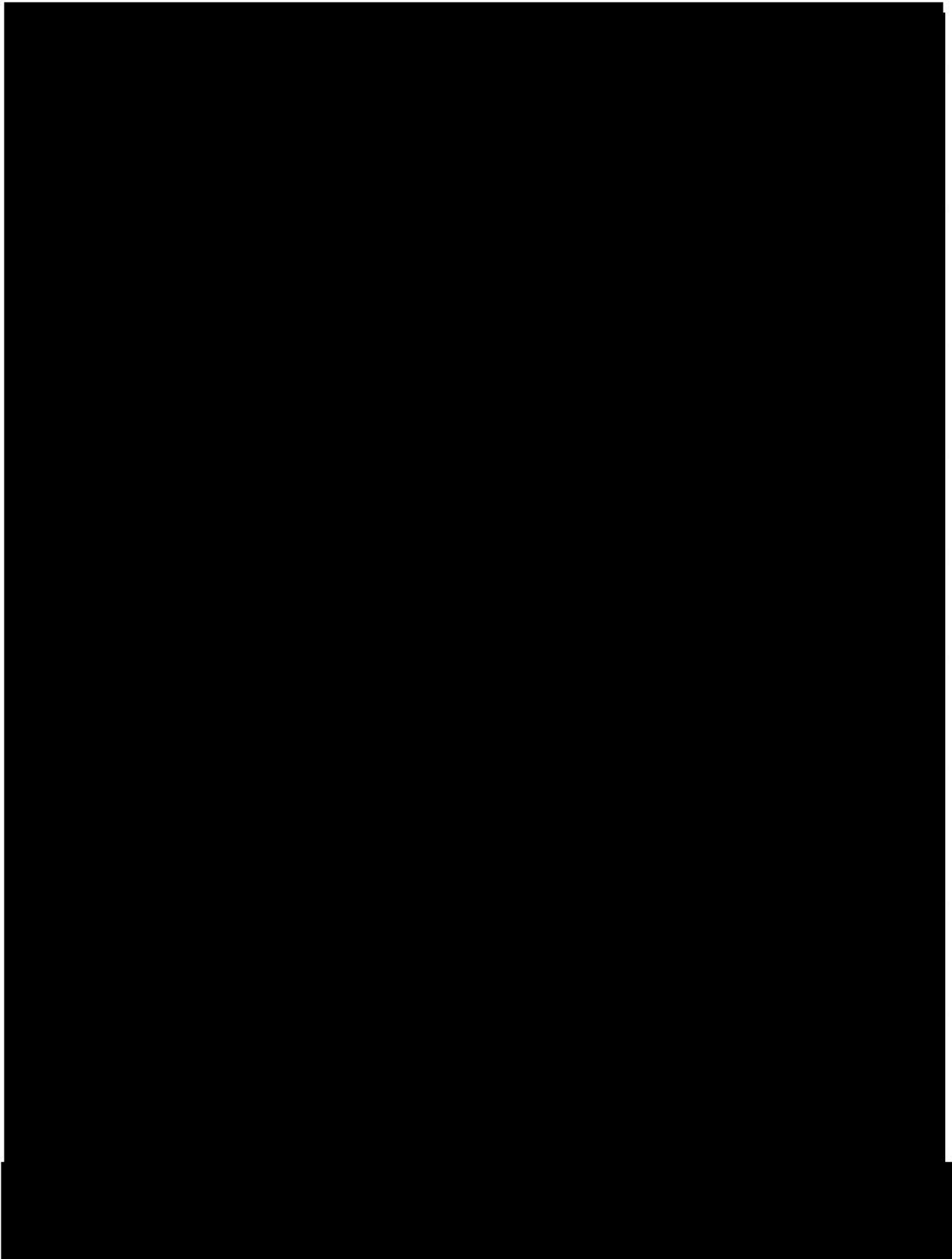
- 7.1.2 the Supplier fails to comply with any part of Paragraph 4.3;
- 7.1.3 the Authority finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.4 to 4.6.1; and/or
- 7.1.4 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6.3.

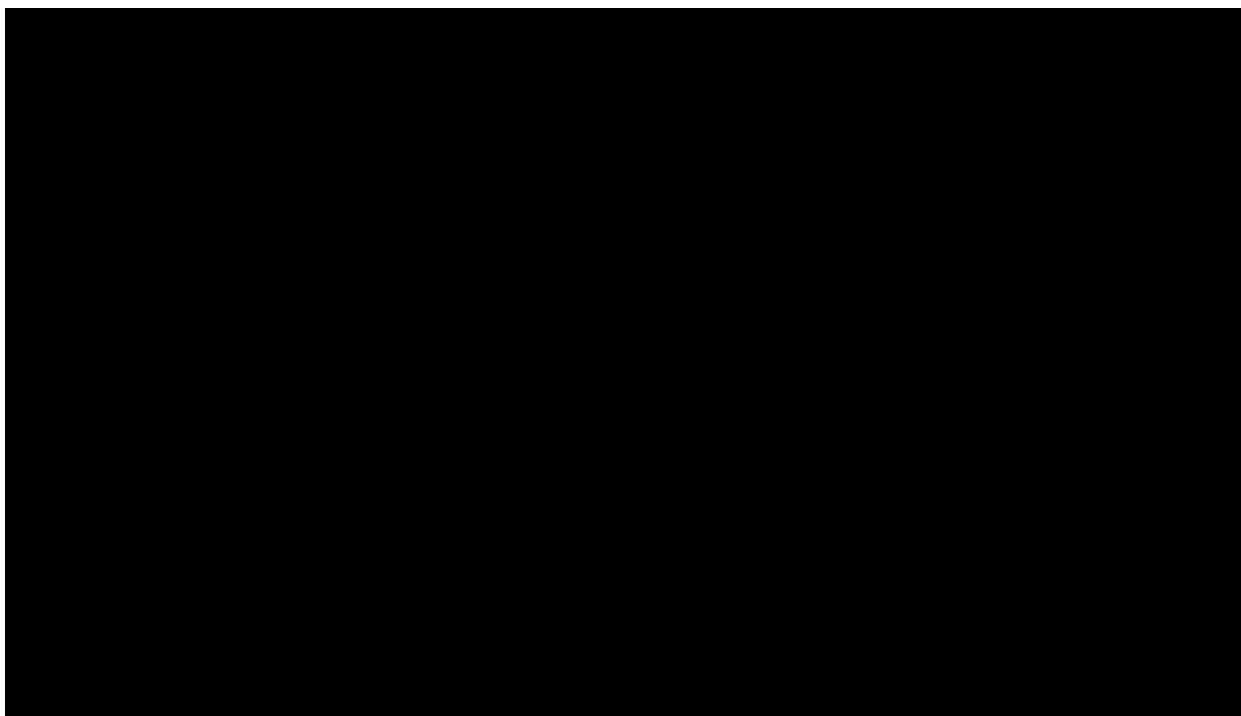
8. Board Confirmation

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of Part B to Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 5 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
 - 8.1.1 that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - 8.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

Annex 1: Rating Agencies and their Standard Rating System

This Annex sets out the standard rating scales for each of the Rating Agencies selected. The Authority reserves the right to use other rating scales from other Rating Agencies that are not listed in this Annex.

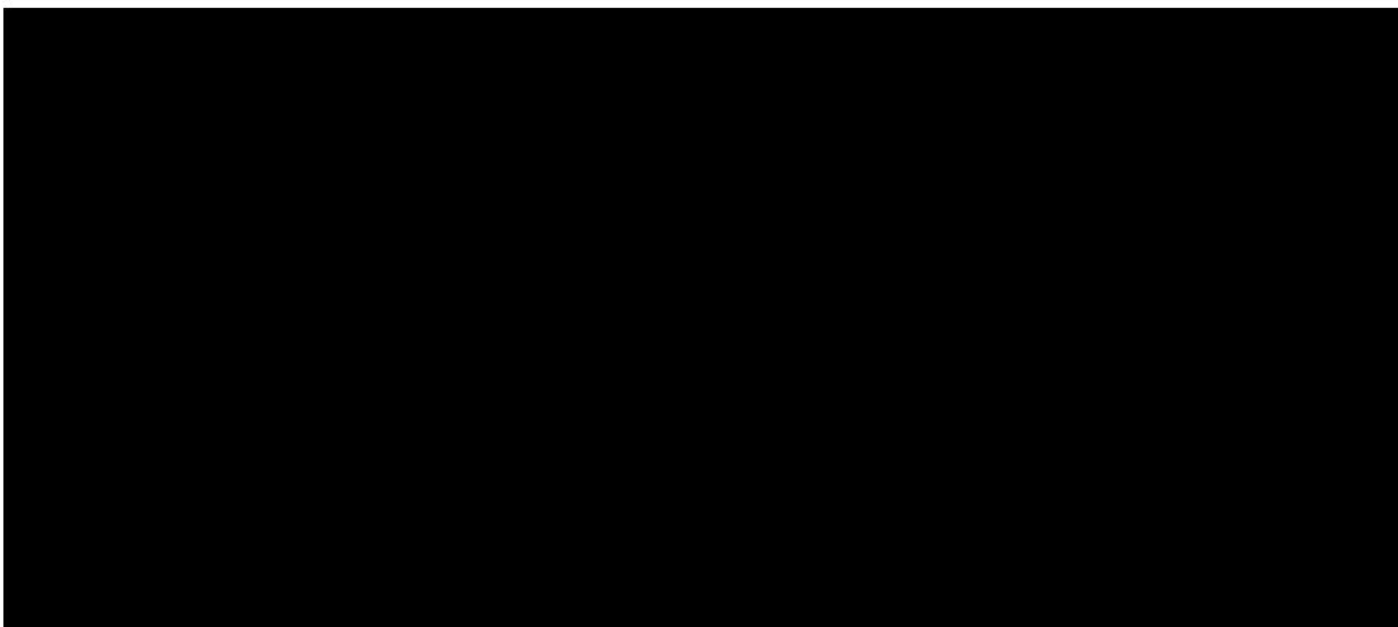




Annex 2: Appropriate Accepted Mitigations

9. As at the Effective Date, the Parties agree that the Appropriate Accepted Mitigation:
 - 9.1 For the Supplier is the existence of a Valid Guarantee provided by a Parent Undertaking as Guarantor and the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and
 - 9.2 For the Supplier is the continued access to unused credit facilities that are in excess of the sum of Current Liabilities less Current Assets.

Annex 3: Credit Ratings and Credit Rating Thresholds



Annex 4: Calculation Methodology for Financial Indicators

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

General methodology

1. **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 <u>Operating Margin</u>	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement (or Statement of Financial Activities) in a standard set of financial statements.</p> <p>Operating Profit is to exclude exceptional items, such as restructuring costs or impairments, and to include any share of Subsidiaries' Operating Profit.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.</p> <p>For Charities Operating Profit would be Net Income or Expenditure after Charitable Activities / Income</p>
2 <u>Net Debt to EBITDA Ratio</u>	<p><i>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</i></p>

Financial Indicator	Specific Methodology
	<p><i>“EBITDA” = Operating profit + Depreciation charge + Amortisation charge. EBITDA is to exclude exceptional items, such as restructuring costs or impairments, and to include any share of Subsidiaries’ EBITDA.</i></p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement (or Statement of Financial Activities) and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <ul style="list-style-type: none"> • <i>Net Debt:</i> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p><i>EBITDA:</i> Operating profit should be shown on the face of the Income Statement (or Statement of Financial Activities) and, for the purposes of calculating this Financial Indicator. <i>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</i></p> <p><i>Where EBITDA is negative, the relevant Financial</i></p>

Financial Indicator	Specific Methodology
	<p><i>Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</i></p> <p>For Charities Operating Profit would be Net Income or Expenditure after Charitable Activities / Income</p>
<p>3</p> <p>[Net Debt + Net Pension Deficit to EBITDA ratio]</p>	<p>“Net Debt” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p>“Net Pension Deficit” = Retirement Benefit Obligations – Retirement Benefit Assets</p> <p>“EBITDA” = Operating profit + Depreciation charge + Amortisation charge. EBITDA is to exclude exceptional items, such as restructuring costs or impairments, and to include any share of Subsidiaries’ EBITDA.</p> <p>The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement (or Statement of Financial Activities) and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <ul style="list-style-type: none"> • <u>Net Debt</u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but <i>not</i> non-designated hedges). Borrowings should also include balances owed to other group members.

Financial Indicator	Specific Methodology
	<p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <ul style="list-style-type: none"> • <u>Net Pension Deficit</u>: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms. <p>Where 'Net Debt + Net Pension Deficit' is negative, the relevant Financial Target Threshold should be treated as having been met.</p> <ul style="list-style-type: none"> • <u>EBITDA</u>: Operating profit should be shown on the face of the Income Statement (or Statement of Financial Activities) and, for the purposes of calculating this Financial Indicator. <p>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</p> <p>Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless 'Net Debt + Net Pension Deficit' is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).</p> <p>For Charities Operating Profit would be Net Income or Expenditure after Charitable Activities / Income</p>
<p>4</p> <p>Net Interest Payable Cover</p>	<p><i>"Earnings Before Interest and Tax"</i> = <i>Operating profit</i></p> <p><i>"Net Interest Payable"</i> = <i>Interest payable – Interest receivable</i></p>

Financial Indicator	Specific Methodology
	<p>Operating profit should be shown on the face of the Income Statement (or Statement of Financial Activities) in a standard set of financial statements. Operating Profit is to exclude exceptional items, such as restructuring costs or impairments, and to include any share of Subsidiaries' Operating Profit</p> <p>Interest receivable and interest payable should be shown on the face of the Cash Flow statement.</p> <p>Where Net interest payable is negative (i.e. the entity has net interest receivable), the relevant Financial Target Threshold should be treated as having been met.</p> <p>For Charities Operating Profit would be Net Income or Expenditure after Charitable Activities / Income</p>
<p>5</p> <p>Current Ratio</p>	<p>All elements that are used to calculate the Current Ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>
<p>6</p> <p>Net Asset value</p>	<p>Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).</p> <p>For Charities Net Assets would be Total Charity Funds</p>
<p>7</p> <p>Group Exposure Ratio</p>	<p><i>"Group Assets"</i> = <i>Current and Non-Current Balances owed by Group Undertakings</i></p> <p><u>Group Exposure</u>: Balances owed by (i.e. receivable from) Group Undertakings are shown within Non-Current assets or Current assets either on the face of the Balance Sheet or in the</p>

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Financial Indicator	Specific Methodology
	<p>relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p><u>Current Assets & Current Liabilities:</u> Both Current assets and Current Liabilities are shown on the face of the Balance Sheet</p>
8 Free Reserve Ratio	<p><u>“Free Reserves” = Unrestricted Reserves – Designated Reserves (Unless these are for Continuity purposes) – Non-cashable Assets (e.g. PPE, Intangible Assets etc.)</u></p> <p>Expenditure is shown on the face of the Income Statement (or Statement of Financial Activities)</p>

Schedule 19

Financial Reports and Audit Rights

Schedule 19: Financial Reports and Audit Rights

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	<ul style="list-style-type: none"> (a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	a Change which:

- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

“Onerous Contract” a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;

“Onerous Contract Report” means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

“Open Book Data” complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Charges broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
 - (ii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin.

Part A: Financial Transparency Objectives and Open Book Data

1. Financial Transparency Objectives

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

1.1.1 Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, of Supplier Personnel in providing the Services and the Supplier Margin;

1.1.2 Agreeing the impact of Change

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

(together the "**Financial Transparency Objectives**").

2. Open Book Data

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

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

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

3. Onerous Contracts

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

3.1.1 An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;

3.1.2 An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;

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- 3.1.3 the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - 3.1.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Strategic Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Strategic Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Strategic Board on an information only basis and the Authority and Strategic Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

Part B: Financial Reports

1. Provision of the Financial Reports

1.1 The Supplier shall provide

- 1.1.1 the Contract Inception Report on or before the Effective Date; and
- 1.1.2 during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Full Review Contract Report	Within 1 month of the end of each 6-month period ending 1 month prior to a Full Review
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

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

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management and statutory accounts; and

1.5.4 compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;

1.6.2 to the extent permitted by Law, ensure that each Annual Contract Report is a true and fair reflection of the Costs and Supplier Margin forecast by the Supplier;

1.6.3 to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and

1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

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

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

1.8.1 the Costs incurred (or those forecast to be incurred) by the Supplier; and/or

1.8.2 the forecast Charges for the remainder of the Term,

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

2. Financial Model

2.1 Following the delivery by the Supplier of each Annual Contract:

2.1.1 the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;

2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and

2.1.3 the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:

(a) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the

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Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

(b) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 23 (*Dispute Resolution Procedure*).

3. Discussion of Full Review Contract Reports and Final Reconciliation Report

3.1 Following the delivery by the Supplier of each Full Review Contract Report, the Parties shall meet to discuss its contents as part of the scheduled Full Review . The Financial Representative shall attend the meeting.

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

Part C: Audit Rights

1. Audit Rights

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

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- 1.1.14 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- 1.1.15 to review the accuracy and completeness of the Registers;
- 1.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- 1.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- 1.1.18 to review the Supplier's compliance with the Standards;
- 1.1.19 to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- 1.1.20 to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 2. **Conduct of Audits**
 - 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
 - 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
 - 2.2.1 all information requested by the Authority within the permitted scope of the audit;
 - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 2.2.3 access to the Supplier System; and
 - 2.2.4 access to Supplier Personnel.
 - 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance

with the Performance Indicators.

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

3. Use of Supplier's Internal Audit Team

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

4. Response to Audits

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - 4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - 4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (a) the amount overpaid;
 - (b) interest on the amount overpaid at the applicable rate under the *Late Payment of Commercial Debts (Interest) Act 1998*, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (c) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
 - 4.1.4 the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Schedule 20

Anticipated Savings

Schedule 20: Anticipated Savings

Not Used

Schedule 21

Governance

Schedule 21: Governance

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Board Member”	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Boards”	the Operational Management Board, Strategic Board, Contract Management Board and “Board” shall mean any of them;
“Contract Management Board”	the body described in Paragraph 6;
“Project Managers”	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
“Operational Management Board”	the body described in Paragraph 4; and
“Technical Board”	the body described in Paragraph 7.

2. Management of the Services

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

3. Boards

Establishment and structure of the Boards

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

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- 3.2.4 location of the Board's meetings; and
 - 3.2.5 planned start date by which the Board shall be established,
- shall be as set out in Annex 1.

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

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
 - 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 that they are debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
 - 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties may agree to combine the meetings of the Operational and Contract Management Boards.
- 3.8 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4. Role of the Transition Management Board

4.1 The Transition Management Board shall be responsible for the day-to-day oversight and steering of the Suppliers Detailed Implementation Plan and shall:

- 4.1.1 Be accountable to the Operational Management Board for comprehensive oversight of the implementation of the Services;
- 4.1.2 Actively monitor, jointly agree a risk treatment approach and activities for each Risk and/or Issue, control and resolve Transition related Risks, Issues and Dependencies as detailed in the RAID log;
- 4.1.3 Report to the Operational Board (and/or Strategic Board) on significant issues requiring decision or resolution and on progress against the Detailed Implementation Plan. This shall include
 - (i) review of Milestone Acceptance Certificates as defined in Schedule 13 – Implementation Plan;
 - (ii) Review of decision by the Authority to request part (or all) of the Service(s) to go live including Services where the Supplier has detailed any material knowledge transfer gaps (either in documentation of relating to non-availability of the Authority's Incumbent Supplier resource to provide relevant knowledge, context and/or relevant know-how), such gaps to be documented as set out in Annex A to Schedule 5 (Outline Implementation Plan);
 - (iii) For the avoidance of doubt, the Authority will make the final determination of when Service Acceptance shall be implemented, notwithstanding its obligation to fairly and reasonably consider the caveats to the Service level (on commencement) set out in the Milestone Acceptance Certificate.

5. Role of the Operational Management Board

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

- 5.1.1 be accountable to the Strategic Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- 5.1.2 report to the Strategic Board on significant issues requiring decision and resolution by the Strategic Board and on progress against the Implementation Plan;
- 5.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of Services, performance against Performance Indicators, progress against the Implementation Plan and input to and review of the DARF;
- 5.1.4 review and report to the Strategic Board on service management, co-ordination of individual projects and any integration issues;

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- 5.1.5 oversee the allocation of resources deployed in the delivery of the Services;
- 5.1.6 consider and resolve Disputes (including Disputes as to the cause of any delay or other failure in the performance of the Services) in the first instance and if necessary escalate the Dispute to the Strategic Board;
- 5.1.7 identify and manage risks relating to delivery of the Services and maintain the Risk Register, ensuring that risks are being actively managed and reported to the Strategic Board; and
- 5.1.8 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

6. Role of the Strategic Board

6.1 The Strategic Board shall:

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

6.2 The Strategic Board shall:

- 6.2.1 ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- 6.2.2 receive and review reports from the Operational Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- 6.2.3 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services; and
- 6.2.4 provide guidance and authorisation to the Contract Management Board on relevant Changes.

7. Role of the Contract Management Board

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

7.2 The Contract Management Board shall:

- 7.2.1 analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (a) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;

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- (b) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
 - (c) will raise any risks or issues relating to the proposed Change; and
 - (d) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- 7.2.2 provide recommendations, seek guidance and authorisation from the Strategic Board as required; and
- 7.2.3 approve or reject (close) all proposed Changes.
- 7.3 The Contract Management Board shall review the performance of the Parties in meeting their respective obligations in accordance with the Contract, including the DARP (and any Statement of Work agreed by the Parties) and agree consequent actions as required.
- 7.4 The Contract Management Board shall review the Performance Report (and any other report due to be delivered in accordance with the Contract) and agree content, including any remedial actions identified as applicable.
- 8. **Contract Management Mechanisms**
- 8.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 8.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - 8.2.1 the identification and management of risks;
 - 8.2.2 the identification and management of issues; and
 - 8.2.3 monitoring and controlling project plans.
- 8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Operational Board.
- 9. **Annual Review**
- 9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 9.2 The meetings shall be attended by the Partner in Charge of the Supplier and the Commercial Business Partner of the Authority and any other persons considered by the Parties necessary for the review.

Annex 1: Representation and Structure of Boards

Operational Management Board

Authority Members of Operational Management Board	To be confirmed
Supplier Members of Operational Management Board	To be confirmed
Start Date for Operational Management Board meetings	To be confirmed
Frequency of Operational Management Board meetings	To be confirmed
Location of Operational Management Board meetings	To be confirmed

Strategic Board

Authority members of Strategic Board	To be confirmed
Supplier members of Strategic Board	To be confirmed
Start date for Strategic Board meetings	To be confirmed
Frequency of Strategic Board meetings	To be confirmed
Location of Strategic Board meetings	To be confirmed

Contract Management Board

Authority Members of Contract Management Board	To be confirmed
Supplier Members of Contract Management Board	To be confirmed
Start Date for Contract Management Board meetings	To be confirmed
Frequency of Contract Management Board meetings	To be confirmed
Location of Contract Management Board meetings	To be confirmed

Schedule 22

Change Control Procedure

Schedule 22: Change Control Procedure

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Drafting Party”	the Party that will prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Receiving Party for its signature;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Change Authorisation Note for signature pursuant to Paragraph 6.2; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2. General Principles of Change Control Procedure

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;

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- 2.3.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- 2.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- 2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 6.3;
- 2.3.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- 2.3.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 14 (*Acceptance Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued in accordance with Paragraph 6.2, then:
 - 2.5.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 2.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 Unless the Authority directs otherwise, the Supplier shall:
 - 2.6.1 within 10 Working Days of the final signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - 2.6.2 thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

3. **Costs**

- 3.1 Subject to Paragraph 3.3:
 - 3.1.1 the costs of preparing each Change Request shall be borne by the Party

making the Change Request; and

3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs unless:

- (a) the Supplier is not able to undertake the Impact Assessment by using resources already deployed in the provision of the Services and has sought, and been provided with, the agreement of the Authority (in writing), for the incurrence of such costs; or
- (b) such costs are less than those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 15 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

4. **Change Request**

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

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

4.4.1 The nature of the request for clarification; and

4.4.2 The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5. Impact Assessment

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

5.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

5.1.2 details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;

5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:

- (a) the Services Description, the Performance Indicators and/or the Target Performance Levels;
- (b) the format of Authority Data, as set out in the Services Description;
- (c) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
- (d) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

5.1.4 details of the cost of implementing the proposed Contract Change;

5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;

5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

5.1.8 such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the UK, in the event of the Personal Data being subject to UK GDPR, or the EU, in the event of the Personal Data being subject to EU GDPR, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).

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- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority receives a proposed Contract Change from the Supplier and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 be based on the Financial Model;
 - 5.5.2 facilitate the Financial Transparency Objectives;
 - 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.5 include evidence of the cost of any assets required for the Change; and
 - 5.5.6 include details of any new Sub-contracts necessary to accomplish the Change.

6. Authority's Right of Approval

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
 - 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

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- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 6.3, then it shall inform the Supplier and, unless otherwise directed by the Authority, the Supplier shall be the Drafting Party. Following receipt by the Receiving Party of the Change Authorisation Note, it shall sign both copies and return one copy to the Drafting Party. Unless otherwise specified, on the Receiving Party's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 6.3 If the Receiving Party does not sign the Change Authorisation Note within 10 Working Days of receipt, then the Drafting Party shall have the right to notify the Receiving Party and if the Receiving Party does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Drafting Party may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. Supplier's Right of Approval

- 7.1 Following an Impact Assessment, if:

7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law; and/or

7.1.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8. Fast-Track Changes

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

- 8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £10,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 6.3 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

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

9. Operational Change Procedure

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- 9.1.1 have an impact on the business of the Authority;
- 9.1.2 require a change to this Contract;
- 9.1.3 have a direct impact on use of the Services; or
- 9.1.4 involve the Authority in paying any additional Charges or other costs.

- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.

- 9.3 The RFOC shall include the following details:

- 9.3.1 the proposed Operational Change; and
- 9.3.2 the time-scale for completion of the Operational Change.

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

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10. Communications

- 10.1 For any Change Communication to be Valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

Annex 1: Change Request Form

CR No:	Title:	Type of change:
Contract:	Required by date:	
Action:	Name:	Date:
Raised by:		
Area(s) impacted (optional field):		
Assigned for impact assessment by:		
Assigned for impact assessment to:		
Supplier reference no.:		
Full description of requested contract change (including proposed changes to the wording of the contract):		
Details of any proposed alternative scenarios:		
Reasons for and benefits and disadvantages of requested contract change:		
Signature of requesting change owner:		
Date of request:		

Annex 2: Change Authorisation Note

CR No.:	Title:	Date raised:
Contract:	Type of change:	Required by date:
Key milestone date:		
Detailed description of contract change for which impact assessment is being prepared and wording of related changes to the contract:		
Proposed adjustment to the charges resulting from the contract change:		
Details of proposed one-off additional charges and means for determining these (e.g. fixed price basis):		
Signed on behalf of the authority:		Signed on behalf of the supplier:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Schedule 23

Dispute Resolution Procedure

Schedule 23: Dispute Resolution Procedure

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre 1 Patternoster Lane, St Paul’s, London, EC4M 7BQ;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Contract; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. Dispute Notices

2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in

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good faith to resolve the Dispute; and

- 2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- 2.2.1 shall set out:

- (a) the material particulars of the Dispute;
- (b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- (c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

- 2.2.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:

- 2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

- 2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.

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

- 2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);
- 2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).

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

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3. Expedited Dispute Timetable

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, 10 Working Days;
 - 3.2.2 in Paragraph 5.2, 10 Working Days;
 - 3.2.3 in Paragraph 6.2, 5 Working Days; and
 - 3.2.4 in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. Commercial Negotiation

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Representative and the Supplier's Representative, or such other individual as they may be notified by a Party to the other Party from time to time.
- 4.2 If:
- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
 - 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
 - 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

5. Mediation

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

6. Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
 - 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - (a) an appropriate body agreed between the Parties; or

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- (b) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- 6.3.1 they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings

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in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
- 7.5.2 the arbitration shall be administered by the LCIA;
- 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 7.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 7.5.5 the chair of the arbitral tribunal shall be British;
- 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
- 7.5.7 the seat of the arbitration shall be London.

8. Urgent Relief

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
- 8.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9. Multi-Party Disputes

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to

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Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- 9.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 9.6.1 the Authority;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the

Schedule 23: (Dispute Resolution Procedure)

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Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- 9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
 - 9.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
 - 9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute, and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.
- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

Schedule 24

Reports and Records Provisions

Schedule 24: Reports and Records Provisions

1. Transparency Reports

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the **"Transparency Reports"**).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority 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 Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2. Other Reports

- 2.1 The Authority may require any or all of the following reports:
 - 2.1.1 delay reports;
 - 2.1.2 reports relating to Testing and tests carried out under Schedule 5 (*Security Management*) and Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
 - 2.1.3 reports which the Supplier is required to supply as part of the Management Information;
 - 2.1.4 annual reports on the Insurances;
 - 2.1.5 security reports; and
 - 2.1.6 Force Majeure Event reports.

3. Records

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together **"Records"**):
 - 3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
 - 3.1.2 in chronological order;
 - 3.1.3 in a form that is capable of audit; and

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- 3.1.4 at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
 - 3.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - 3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 4. **Virtual Library**
 - 4.1 The Supplier shall within 60 Working Days of the Effective Date create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in in accordance with the requirements outlined in this Schedule.
 - 4.2 The Supplier shall ensure that the Virtual Library is:
 - 4.2.1 capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
 - 4.2.2 structured so that each document uploaded has a unique identifier which is automatically assigned;
 - 4.2.3 readily accessible by the Authority at all times in full via a user-friendly,

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password protected interface, or such other mechanism for access as agreed with the Authority, to such nominated users as are notified to the Supplier by the Authority from time to time,

- 4.2.4 structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
- 4.2.5 structured and maintained in accordance with the security requirements as set out in this Contract including those set out in Schedule 5 (*Security Management*);
- 4.2.6 created and based on open standards in Schedule 4 (*Standards*); and
- 4.2.7 backed up on a secure off-site system.
- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Paragraph 1.1 of Schedule 32 (*Intellectual Property Rights*) of this Contract.
- 4.4 The Supplier shall upload complete and accurate information specified in Annex 3 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address which shall be confirmed to the Supplier when required.
- 4.6 Except for notices under Clause 42.4 or items covered by Clause 42.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Annex 3) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3) from the Initial Upload Date.

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- 4.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:
- 4.10.1 be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10.2 of this Schedule); and
 - 4.10.2 report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.
- 4.14 In the event of a conflict between any requirement in this Contract (excluding Annex 3) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Contract shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational Service Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 4.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

Annex 1: Transparency Reports

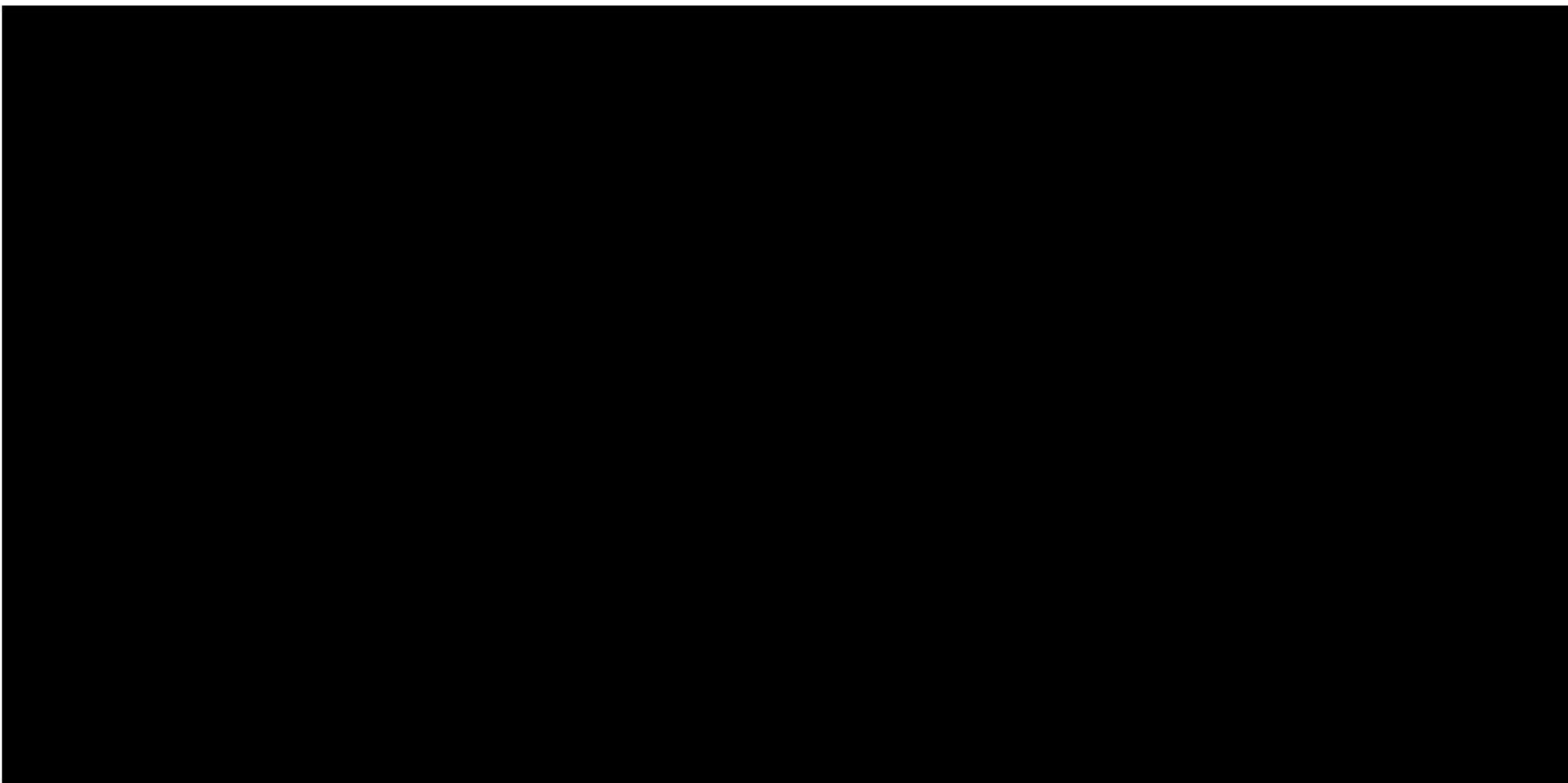
Title	Content	Format	Frequency
(Performance)			
(Charges)			
(Major sub-contractors)			
(Technical)			
(Performance management)			

Annex 2: Records to be Kept by the Supplier

The records to be kept by the Supplier are:

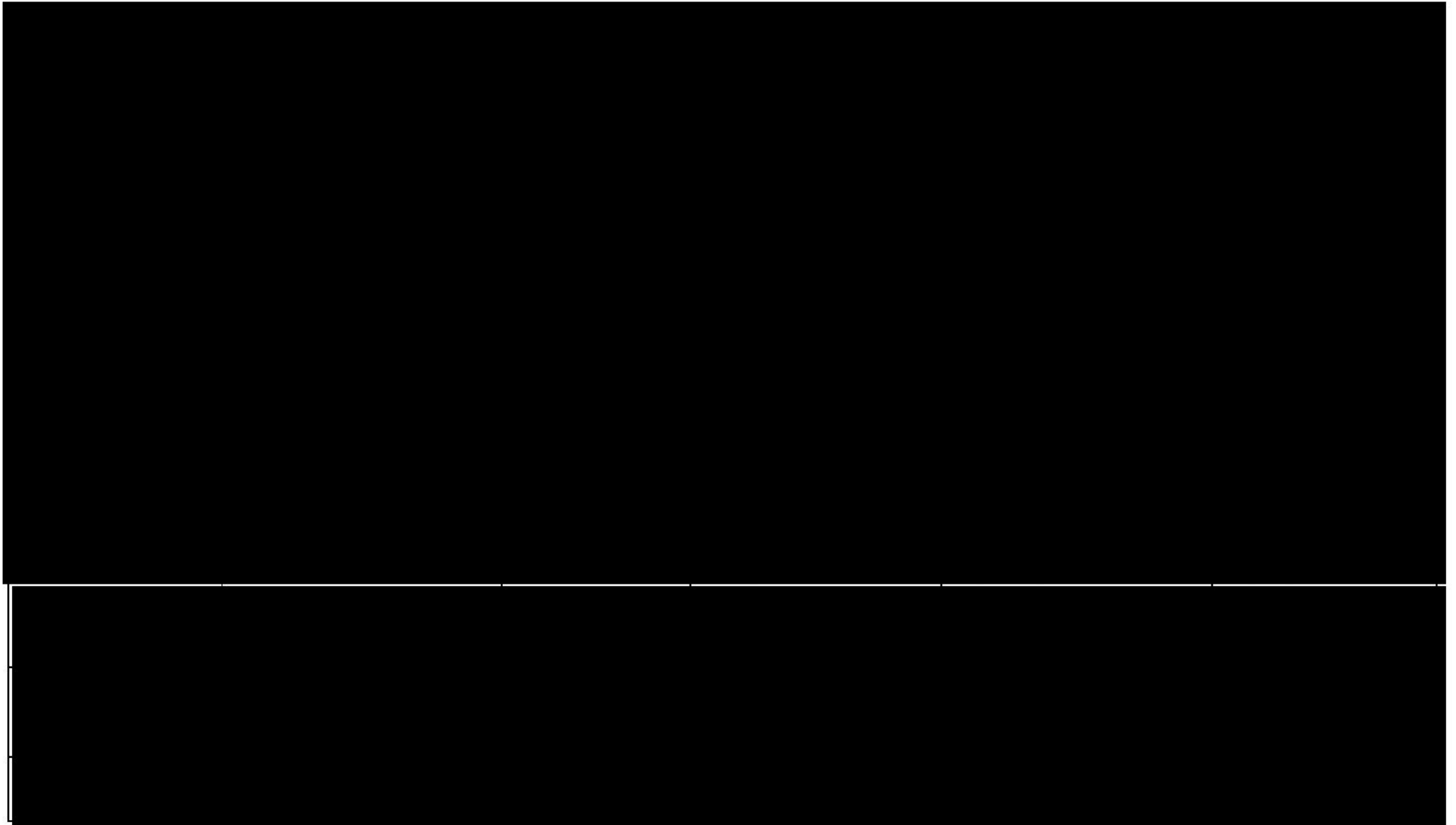
7. This Contract, its Schedules and all amendments to such documents.
8. All other documents which this Contract expressly requires to be prepared.
9. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
10. Notices, reports and other documentation submitted by any Expert.
11. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
12. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
13. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
14. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
15. Documents prepared by the Supplier in support of claims for the Charges.
16. Documents submitted by the Supplier pursuant to the Change Control Procedure.
17. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
18. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
19. Invoices and records related to VAT sought to be recovered by the Supplier.
20. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
21. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
22. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
23. All journals and audit trail data referred to in Schedule 5 (*Security Management*).
24. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

Annex 3: Records to Upload to Virtual Library



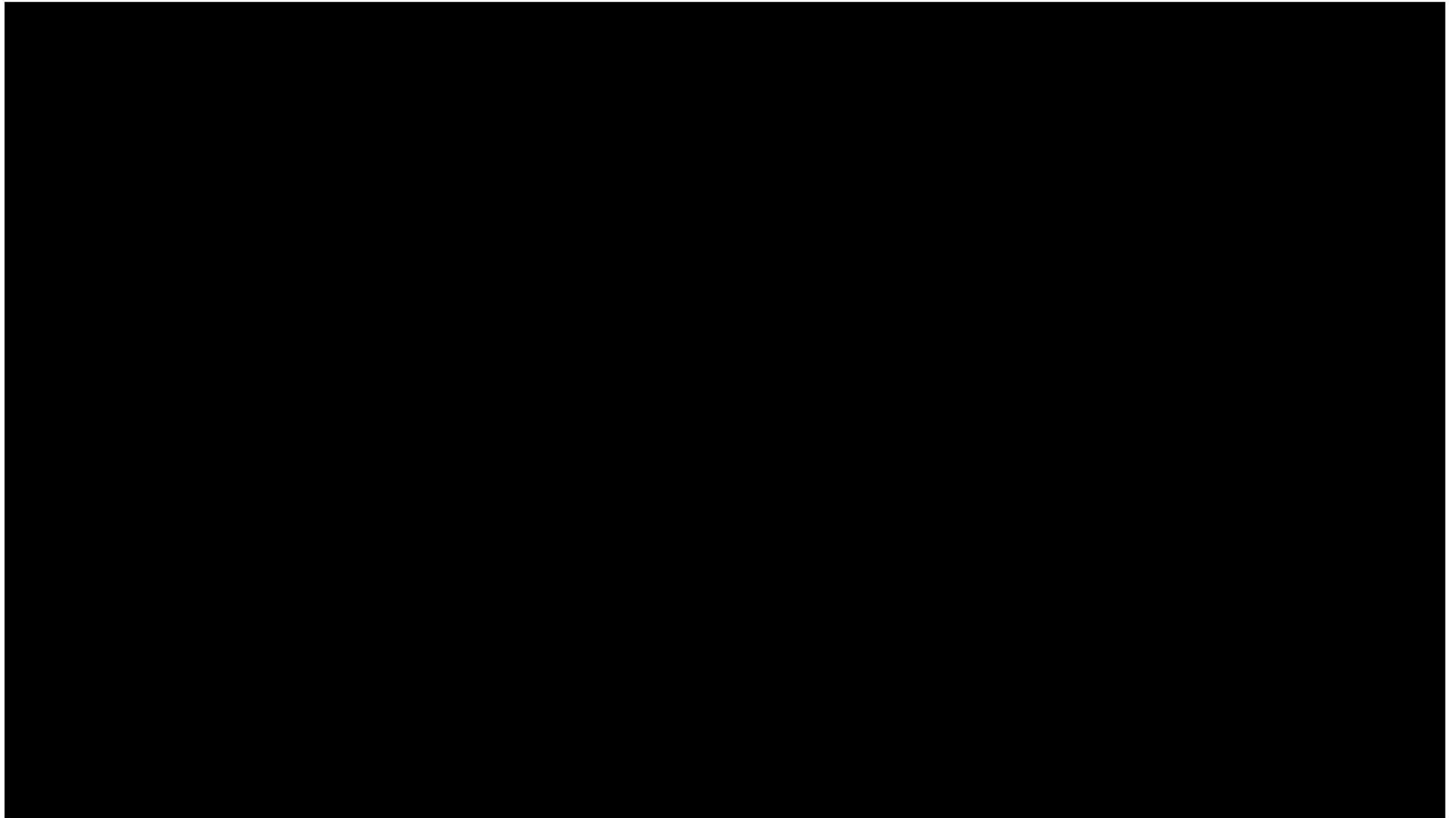
Schedule 24: (Reports and Records Provisions)

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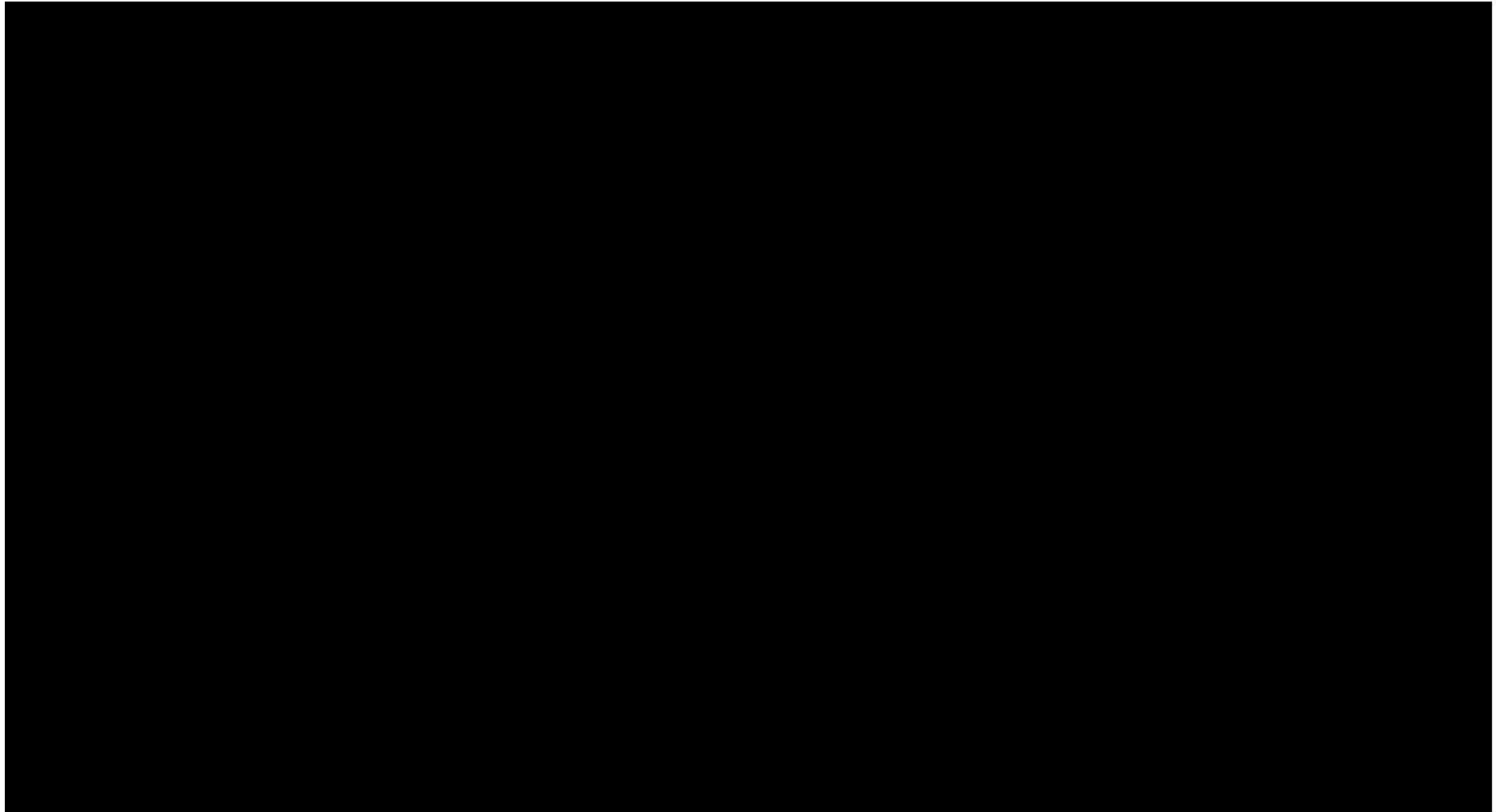
Schedule 24: (Reports and Records Provisions)

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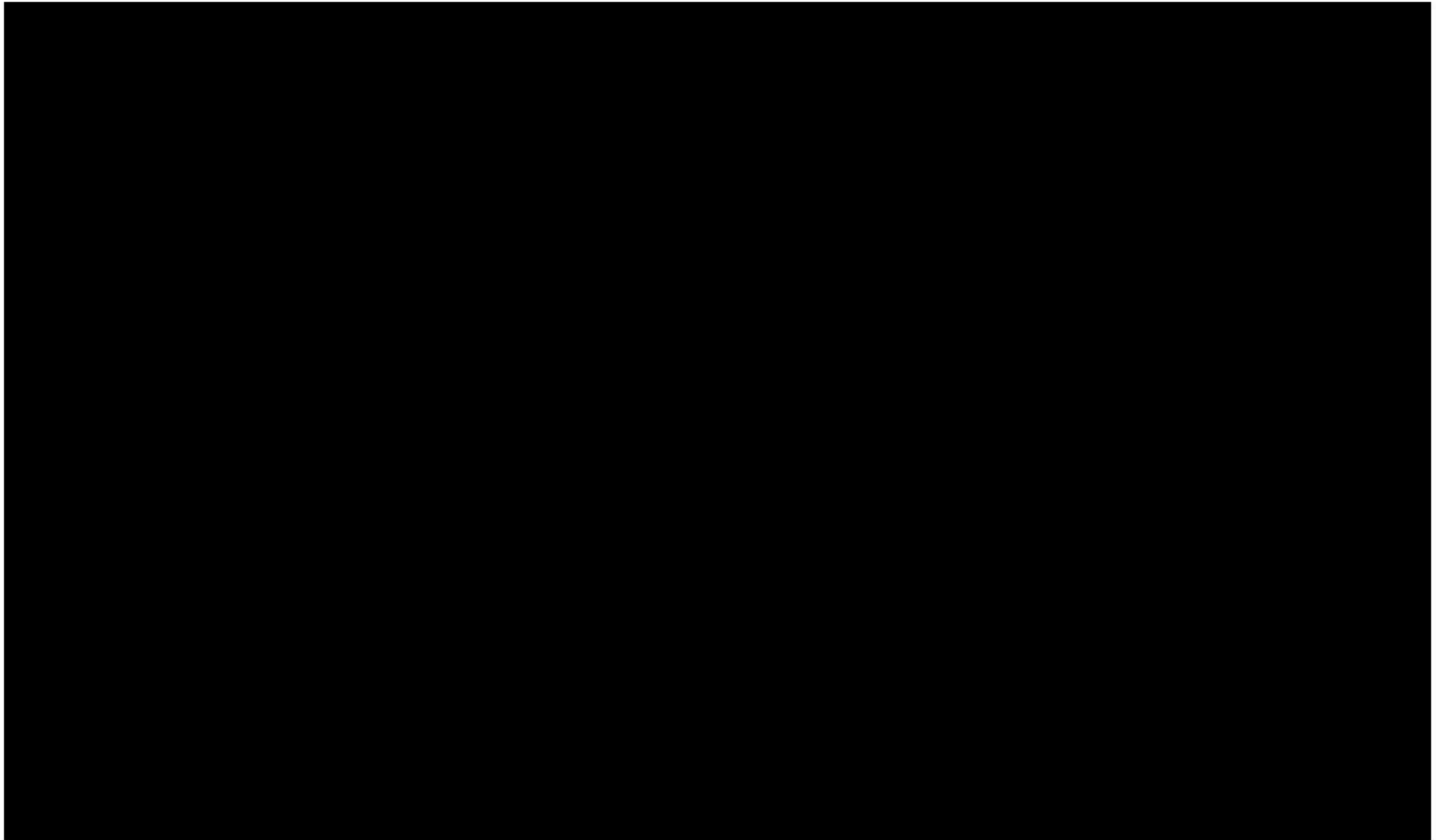
Schedule 24: (Reports and Records Provisions)

Crown Copyright 2023



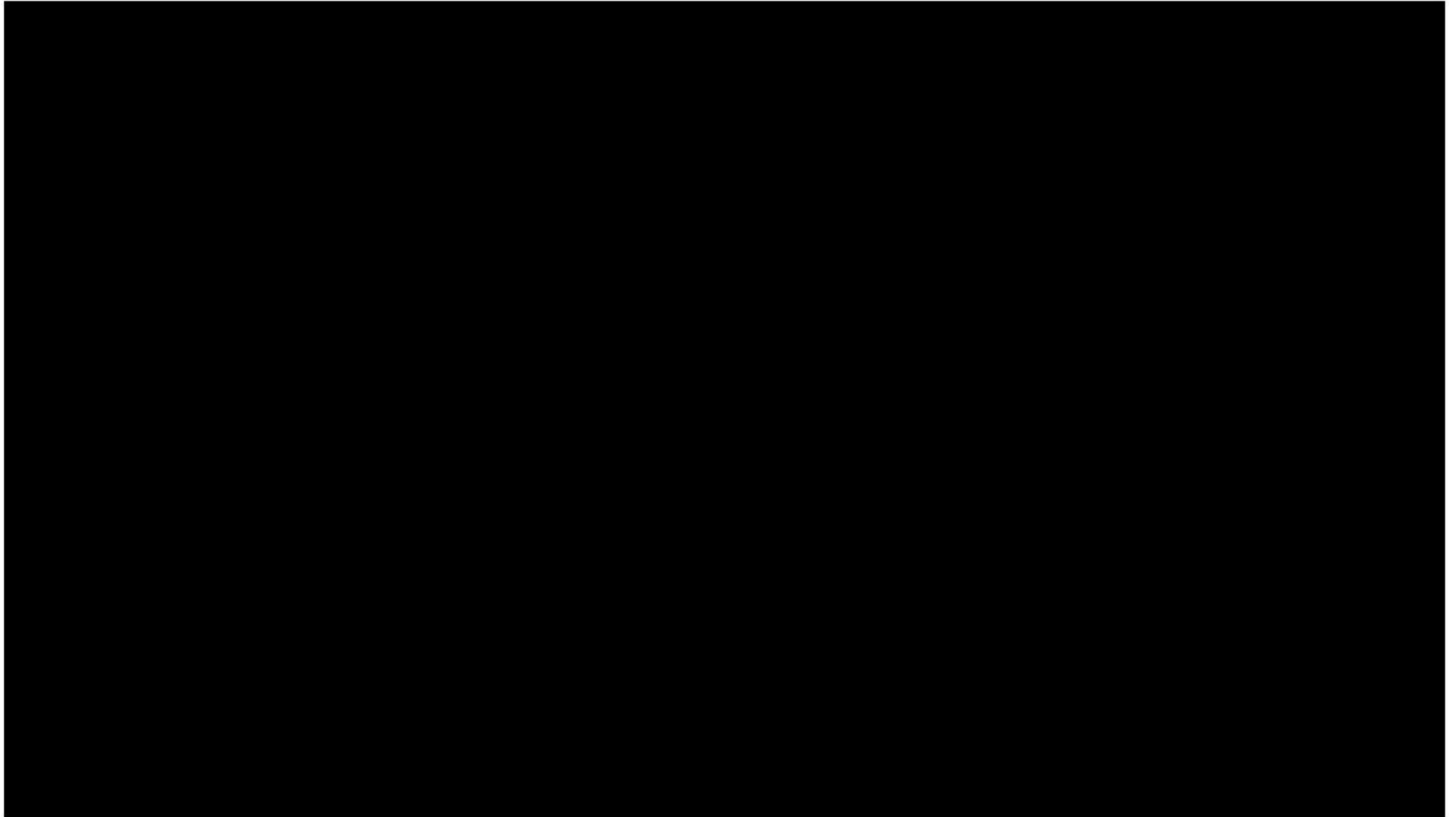
Schedule 24: (Reports and Records Provisions)

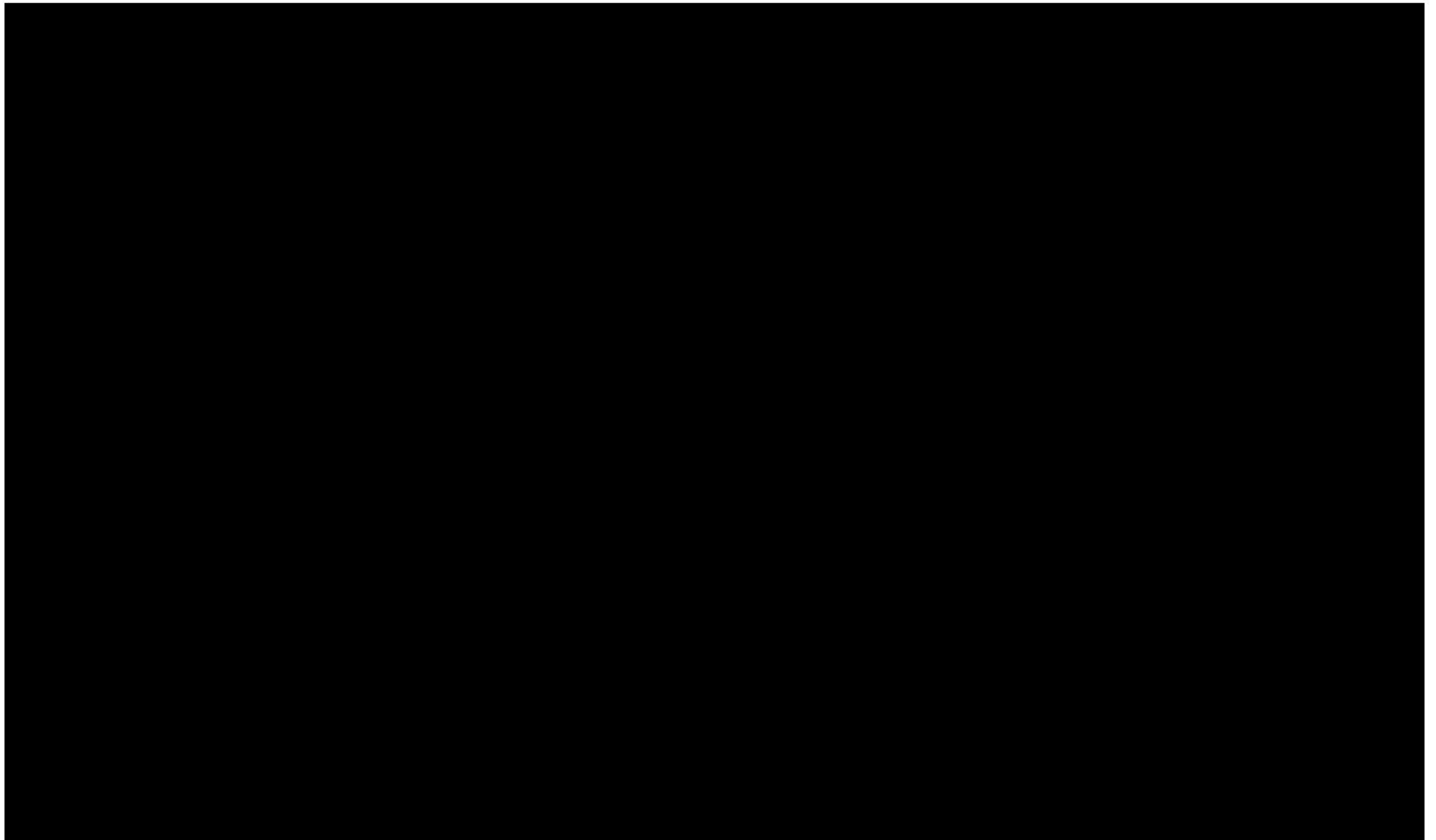
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Schedule 24: (Reports and Records Provisions)

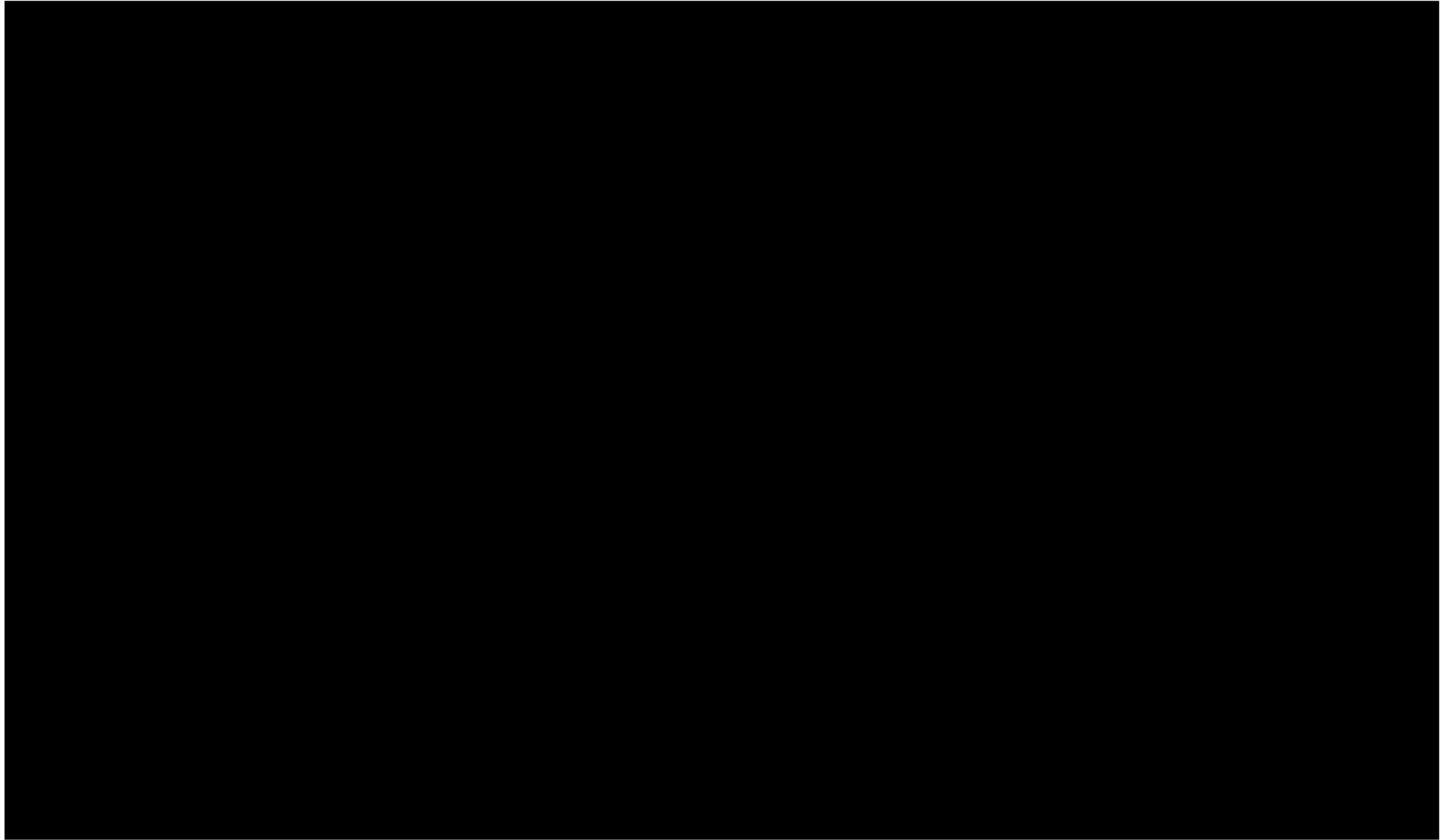
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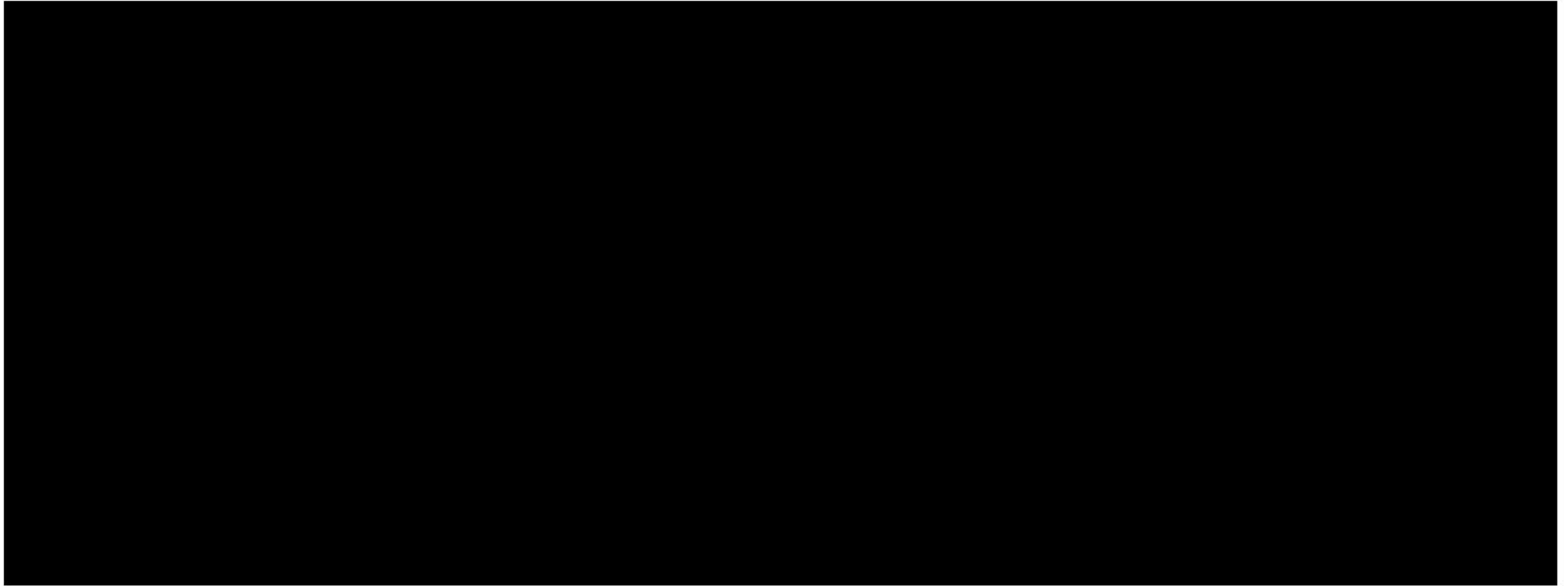
Schedule 24: (Reports and Records Provisions)

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Schedule 24: (Reports and Records Provisions)

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Annex 4: Supply Chain Transparency Information Template

	Financial Year			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£	100%	£	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£		£	
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£		£	
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£		£	

Schedule 25

Exit Management

Schedule 25: Exit Management

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Contract which is a: <ul style="list-style-type: none">(c) termination of the whole or part of this Contract in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(d) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or(e) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: <ul style="list-style-type: none">(f) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to

terminate pursuant to such Clause is greater than or equal to 6 months; or

- (g) as a result of the expiry of the Initial Term or any Extension Period;

“Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts” the Sub-contracts, licences for Supplier’s Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

“Transferring Contracts has the meaning given in Paragraph 7.2.3.

2. **Obligations During the Term to Facilitate Exit**

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

- (a) Assets, detailing their:
- (b) make, model and asset number;
- (c) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (d) Net Book Value;
- (e) condition and physical location; and
- (f) use (including technical specifications); and
- (g) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

2.1.4 at all times keep the Registers up to date, in particular in the event that Assets,

Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3. **Obligations to Assist on Re-tendering of Services**

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

3.1.1 details of the Service(s);

3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

3.1.3 an inventory of Authority Data in the Supplier's possession or control;

3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;

3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and

3.1.7 such other material and information as the Authority shall reasonably require, (together, the "**Exit Information**").

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

Schedule 25: (Exit Management)

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3.3 The Supplier shall:

- 3.3.1 notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 3.5.1 prepare an informed offer for those Services; and
- 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4. Obligation to enter into an Ethical Wall Agreement on Re-tendering of Services

4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5. Exit Plan

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
- 5.1.2 complies with the requirements set out in Paragraph 5.2; and
- 5.1.3 is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- 5.3.1 how the Exit Information is obtained;

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- 5.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- 5.3.5 the management structure to be employed during the Termination Assistance Period;
- 5.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- 5.3.7 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 5.3.8 the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- 5.3.9 a timetable and critical issues for providing the Termination Services;
- 5.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- 5.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
- 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (*Staff Transfer*); and
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year

(commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6. Termination Services

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Services are required;
 - 6.1.2 the nature of the Termination Services required; and
 - 6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract;
- 6.2 The Authority shall have:
- 6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance period beyond the date which is 30 months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract ;and provided that it shall notify the Supplier to such effect no later

than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

- 6.2.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- 6.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - 6.3.2 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - 6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority;
 - 6.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
 - 6.3.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other

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provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

- 6.7.1 cease to use the Authority Data;
- 6.7.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- 6.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- 6.7.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (a) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (b) any items that have been on-charged to the Authority, such as consumables;
- 6.7.5 vacate any Authority Premises unless access is required to continue to deliver the Services;
- 6.7.6 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7.6(b).
- 6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 7. **Assets, Sub-contracts and Software**
 - 7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated

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Services, without the Authority's prior written consent:

- 7.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 7.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3.5, the Authority shall provide written notice to the Supplier setting out:
- 7.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - 7.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
 - 7.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),
- in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- 7.3.1 a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - 7.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

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- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2.3 that the Authority 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:
- 7.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 7.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
- 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 7.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Authority (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 Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- 7.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Schedule 32 (*Intellectual Property Rights*).

8. Supplier Personnel

- 8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 28 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9. Charges

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
 - 9.2.1 where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - 9.2.2 where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall

not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10. Apportionments

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

Annex 1: Scope of the Termination Services

1. Scope of the Termination Services

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- 1.1.1 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.3 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.4 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.5 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - 1.1.6 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - 1.1.7 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 1.1.8 agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
 - 1.1.9 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
 - 1.1.10 providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
 - 1.1.11 provide all necessary support, equipment, tools, and Software such as data

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migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;

- 1.1.12 making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 1.1.13 analysing and providing information about capacity and performance requirements and known planned requirements for capacity growth across these areas;
- 1.1.14 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.15 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.16 assisting in the execution of a parallel operation of the Services until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.17 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.1.18 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.1.19 agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- 1.1.20 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
 - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- 1.1.21 knowledge transfer services, including:

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- (a) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
- (b) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
- (c) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (d) allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by the Authority at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.18, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1.27 1.1.26 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- 1.4.4 key support contact details for third party supplier personnel under contracts

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which are to be assigned or novated to the Authority pursuant to this Schedule;

- 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- 1.4.6 details of physical and logical security processes and tools which will be available to the Authority; and
- 1.4.7 any relevant interface information,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- 1.5.2 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Annex 2: Draft Ethical Wall Agreement

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[] (the “Effective Date”).

BETWEEN:

- (a) [insert NAME OF AUTHORITY] (the “Authority”) [acting on behalf of the Crown] of [insert Authority's address]; and
 - (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the “Counterparty”),
- together the “Parties” and each a “Party”.

BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (“Agreement”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- (B) The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the “Purpose”).
- (C) The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1. Definitions and Interpretation

1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“Agreement” means this ethical walls agreement duly executed by the Parties;

“Bid Team” means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

“Crown Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics, including:

- (a) Government Departments;
- (b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- (c) Non-Ministerial Departments; or
- (d) Executive Agencies;

“Conflicted Personnel” means any Representatives of:

- (a) the Counterparty;
- (b) any of the Counterparty’s Affiliates; and/or
- (c) any Subcontractors,

who, because of the Counterparty’s, any of its Affiliates’ and/or any Subcontractors’ relationship with the Authority under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

“Contract” means any pre-existing or previous contract between the Authority and:

- (a) the Counterparty;
- (b) any of the Counterparty’s Affiliates;
- (c) any Subcontractor; and
- (d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

“Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Effective Date” means the date of this Agreement as set out above;

“Invitation to Tender” or **“ITT”** means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);

“ITT Process” means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

“ITT Response” means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

“Procurement Process” means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of all contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Authority;

“Procurement Regulations” means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

“Purpose” has the meaning given to it in recital B to this Agreement;

“Representative” refers to a person’s officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

“Subcontractor” means an existing or proposed subcontractor of:

- (a) the Counterparty; and/or
- (b) any of the Counterparty’s Affiliates,

who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

“Third Party” means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

“Working Day” means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty’s Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms **“associate”**, **“holding company”**, **“subsidiary”**, **“subsidiary undertaking”** and **“wholly owned subsidiary”** have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words **“include”** and **“including”** are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2. Ethical Walls

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

Conflicts of Interest

- 2.2 The Counterparty:
 - 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of

the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and

2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.

2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:

2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;

2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;

2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:

- (a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
- (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,

becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;

2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;

2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors in a form to be approved by the Authority;

2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

2.3.7 providing regular training to its Affiliates, any Subcontractors and/or

Representatives to ensure it is complying with this Agreement;

- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

- 2.4 The Counterparty shall:
 - 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
 - 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
 - 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

Exclusion from the ITT Process

- 2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process,

and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.

- 2.9 The actions of the Authority pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

Bid Costs

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:

2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or

2.10.2 any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

Specific Remedies

- 2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

3. Sole Responsibility

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

4. Waiver and Invalidity

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5. Assignment and Novation

- 5.1 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 5.2.1 any Crown Body; or
- 5.2.2 to a body other than a Crown Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
- 5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Crown Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6. Contracts (Rights of Third Parties) Act 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

7. Transparency

- 7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8. Notices

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email.	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery.	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery	Properly addressed and delivered as evidenced by

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Manner of Delivery	Deemed time of service	Proof of service
	will occur at 9.00am on the next Working Day.	signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact		
Address		
Email		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9. Waiver and Cumulative Remedies

- 9.1 The rights and remedies under this Agreement may be waived only by notice, and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10. Term

- 10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date/or for the period of the duration of the Procurement Process

11. Governing Law and Jurisdiction

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

Schedule 26

Service Continuity Plan and Corporate Resolution Planning

Schedule 26: Service Continuity Plan and Corporate Resolution Planning

Part A: Service Continuity Plan

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2.1(b);
“Business Continuity Services”	has the meaning given in Paragraph 4.2.2;
“Department”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 2 Working Days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2.1(c);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2.1(d).
“Related Service Provider”	any person who provides services to the Authority in relation to this Contract from time to time, which persons include as at the Effective Date;
“Review Report”	has the meaning given in Paragraphs 7.2.1 to 7.2.3; and

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“Service Continuity Plan” means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

2. Service Continuity Plan

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a 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 Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

2.2.1 be divided into four parts:

- (a) Part A which shall set out general principles applicable to the Service Continuity Plan;
- (b) Part B which shall relate to business continuity (the **“Business Continuity Plan”**);
- (c) Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**);
- (d) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and

2.2.2 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

2.4.2 the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority’s comments) and shall re-submit a revised

draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. Service Continuity Plan: Part A – General Principles and Requirements

3.1 Part A of the Service Continuity Plan shall:

- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- 3.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority 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 multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (d) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;

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- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
 - 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 ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Service Continuity Plan: Part B – Business Continuity

Principles and Contents

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
 - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root

cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- 4.2.1 address the various possible levels of failures of or disruptions to the Services;
- 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- 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 in respect of other Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. **Service Continuity Plan: Part C – Disaster Recovery**

Principles and Contents

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 details of the procedures and processes to be put in place by the Supplier in relation to provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Supplier’s approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the Services to address any

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prevailing effect of the failure or disruption of the Services;

- 5.3.2 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.3 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;
- 5.3.4 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.5 testing and management arrangements.

6. Service Continuity Plan: Part D – Insolvency Continuity Plan

Principles and Contents

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - 6.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - 6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - 6.2.3 plans to manage and mitigate identified risks;
 - 6.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
 - 6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
 - 6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7. Review and Amendment of the Service Continuity Plan

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis

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on which it is based):

- 7.1.1 on a regular basis and as a minimum once every 12 months];
 - 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
 - 7.1.3 within 14 days of a Financial Distress Event;
 - 7.1.4 within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph 2.8.2(a), in which case that Corporate Change Event Grace Period will apply); and
 - 7.1.5 where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
- 7.2.1 the findings of the review;
 - 7.2.2 any changes in the risk profile associated with the Services; and
 - 7.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

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- 7.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
 - 7.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 7.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.
- 8. Testing of the Service Continuity Plan**
 - 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
 - 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
 - 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
 - 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on

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completion of the test.

8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:

8.5.1 the outcome of the test;

8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and

8.5.3 the Supplier's proposals for remedying any such failures.

8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.

8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9. Invocation of the Service Continuity Plan

9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:

9.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or

9.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

Part B: Corporate Resolution Planning

1. Service Status and Supplier Status

- 1.1 This Contract is not a Critical Service Contract.
- 1.2 The Supplier shall notify the Authority and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

2. Provision of Corporate Resolution Planning Information (CRP Information)

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
 - 2.2.1 where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with CRP Information within 60 days of the Effective Date; and
 - 2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
 - 2.3.1 is full, comprehensive, accurate and up to date;
 - 2.3.2 is split into three parts:
 - (a) Exposure Information (Contracts List);
 - (b) Corporate Resolvability Assessment (Structural Review);
 - (c) Financial Information and Commentaryand is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
 - 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;

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- 2.3.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or CNI and the nature of those agreements; and
 - 2.3.5 complies with the requirements set out at Annex 1 (*Exposure Information (Contracts List)*), Annex 2 (*Corporate Resolvability Assessment (Structural Review)*) and Annex 3 (*Financial Information And Commentary*) respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
 - 2.5.1 the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
 - 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - 2.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events

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if this Contract had then been in force) have occurred since the date of issue of the Assurance.

- 2.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:
- 2.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B)
 - 2.8.2 within 30 days of a Corporate Change Event unless:
 - (a) the Supplier requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or
 - (b) not required pursuant to Paragraph 2.10;
 - 2.8.3 within 30 days of the date that:
 - (a) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
 - (b) none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
 - 2.8.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (a) updated CRP Information has been provided under any of Paragraphs 2.8.1 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or
 - (b) unless not required pursuant to Paragraph 2.10.
- 2.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the

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Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

2.10.1 Aa3 or better from Moody's; or

2.10.2 AA- or better from Standard and Poor's; or

2.10.3 AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 2.8.

3. Termination Rights

3.1 The Authority shall be entitled to terminate this Contract under Clause 31.1.2 (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:

3.1.1 the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or

3.1.2 the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

4. Confidentiality and usage of CRP Information

4.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 19 (*Confidentiality*).

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- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
 - 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality
 - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (a) summarising the information;
 - (b) grouping the information;
 - (c) anonymising the information; and
 - (d) presenting the information in general terms
- 4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

Annex 1: Exposure Information (Contracts List)

1. The Supplier shall:

- 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: Crown Bodies and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1.1 of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
- 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

Annex 2: Corporate Resolvability Assessment (Structural Review)

1. The Supplier shall:

- 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
- 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
- 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

Annex 3: Financial Information And Commentary

1. The Supplier shall:

- 1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
 - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
2. For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*). If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

Schedule 27

Conduct of Claims

Schedule 27: Conduct of Claims

1. Indemnities

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
 - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of

Paragraph 1.4.

2. **Sensitive Claims**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. **Recovery of Sums**

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- 3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. **Mitigation**

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

Schedule 28

Staff Transfer

Schedule 28: Staff Transfer

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Admission Agreement”	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;
“Fair Deal Employees”	as defined in Part D;
“Former Supplier”	a supplier supplying services to the Authority before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including:</p> <ul style="list-style-type: none">(c) any amendments to that document immediately prior to the Relevant Transfer Date;(d) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”</i> issued in June 2004;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier’s Provisional Supplier Personnel List or Supplier’s Final Supplier Personnel List, as the case may be, all information required in Annex E2: Staffing Information in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2: Staffing Information from time to time.
“Statutory Schemes”	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

3. Applicable Parts of this Schedule

- 3.1 The following parts of this Schedule shall apply to this Contract:
- 3.1.1 Part A (*Staff Transfer At Operational Commencement Date – Outsourcing From the Authority*) N/A
 - 3.1.2 Part B (*Staff Transfer At Operational Commencement Date – Transfer From Former Supplier*) – N/A
 - 3.1.3 Part C (*No Staff Transfer On Operational Commencement Date*)
 - 3.1.4 Part D (*Pensions*) N/A
 - (a) Annex D1 (*CSPS*)
 - (b) Annex D2 (*NHSPS*)
 - (c) Annex D3 (*LGPS*)
 - (d) Annex D4 (*Other Schemes*)
 - 3.1.5 Part E (*Employment Exit Provisions*) of this Schedule will always apply to this Contract, including:
 - (a) Annex E1 (*List Of Notified Sub-Contractors*)
 - (b) Annex E2 (*Staffing Information*).

Part A: Transferring Authority Employees at Commencement of Services

Not Used

Part B: Transferring Former Supplier Employees at Commencement of Services

Not used.

Part C: No Transfer of Employees Expected at Commencement of Services

3. Procedure in the Event of Transfer

- 3.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 3.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
 - 3.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 3.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 3.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 3.4 If by the end of the 15 Working Day period specified in Paragraph 1.2.2:
 - 3.4.1 no such offer of employment has been made;
 - 3.4.2 such offer has been made but not accepted; or
 - 3.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.s
- 3.5 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
 - 3.5.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

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- 3.5.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 3.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (*Pensions*) and its Annexes of this Staff Transfer Schedule.
- 3.7 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority 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.
- 3.8 The indemnities in Paragraph 2.1:
- 3.8.1 shall not apply to:
- (a) any claim for:
1. 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
 2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (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; and
- 3.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Relevant Transfer Date.

4. Procurement Obligations

- 4.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only

that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

Not used.

Annex D1: CSPA

Not used.

Annex D2: NHSPS

Not used.

Annex D3: LGPS

Not used.

Annex D4: Other Schemes

Not used.

Part E: Employment Exit Provisions

1. Pre-service Transfer Obligations

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority 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 this Contract; and
 - 1.1.3 the date which is 12 months before the end of the Term; or
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA 2018, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 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 they replace;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the

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terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

- 1.5.3 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 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 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, within 20 Working Days to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of Supplier Personnel engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each Supplier Personnel engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 28 (*Staff Transfer*) (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each Supplier Personnel by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in

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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;
 - 1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
 - 1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
 - 1.7.8 bank/building society account details for payroll purposes.
- 1.8 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 following within 20 Working Days of a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Change Control Procedure.

2. Employment Regulations Exit Provisions

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel

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List all the Transferring Supplier Employees arising in respect of the period up to (and including but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (and including but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.2.1 the Supplier and/or the Sub-contractor (as appropriate); and

2.2.2 the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

2.3.1 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;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring before but excluding the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;

2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and

(b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the

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extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;

- 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take

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such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) 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

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(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; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

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- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.12 Subject to Paragraph 2.13, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.12.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.12.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.12.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.12.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel

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List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.12.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.12.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (c) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (d) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;
- 2.12.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.12.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.13 The indemnities in Paragraph 2.12 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex E1: List of Notified Sub-contractors

Not used.

Annex E2: Staffing Information

Employee Information (Anonymised)

Name of Transferor:

Number of Employees in-scope to transfer:

1. Completion notes

- 1.1 If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.
- 1.2 This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.
- 1.3 If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.

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EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Date of Birth (dd/mm/yy)	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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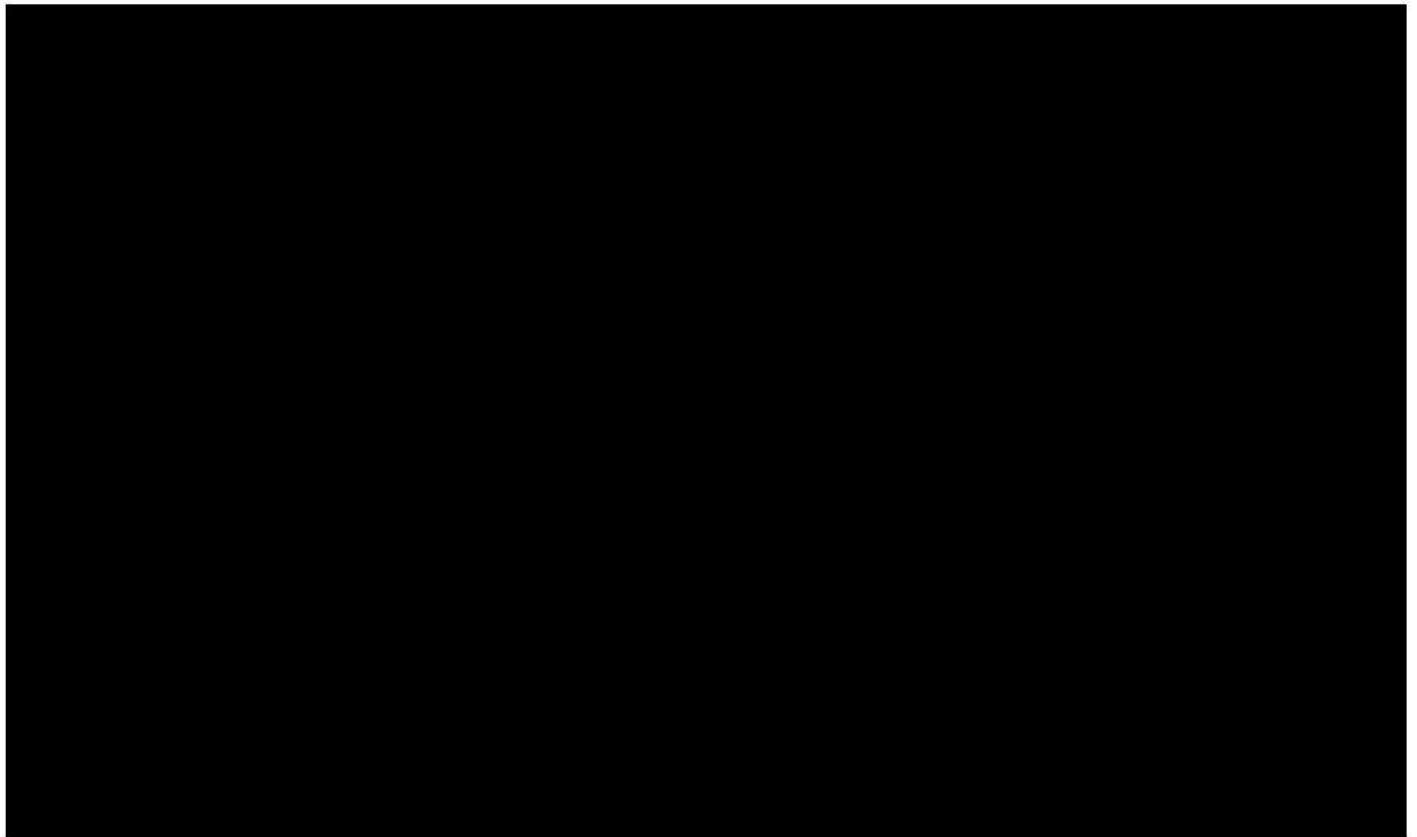
	OTHER		
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

Schedule 29

Key Personnel

Schedule 29: Key Personnel

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 Operational Service Commencement Date (“**Key Personnel**”).



The Authority may nominate up to twelve Key Roles during implementation.

Schedule 30

Deed of Guarantee

Schedule 30: Deed of Guarantee – Provided Separately

Deed of Guarantee is held on the Authority's Systems (DDaT MBTP Commercial Team's SharePoint folders) as a Contract Artefact, with the title "Home Office Deed of Guarantee – Restated – (PA Consulting Dec 2024) Bugged – Executed by JJ VN Signed.pdf"

Schedule 31

Processing Personal Data

Schedule 31: Processing Personal Data

1. **Data Processing**

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>None</p> <p>The Supplier is Controller and the Authority is Processor The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause 21.2 to 21.15 of the following Personal Data:</p> <p>None at this stage.</p> <p>The Parties are Joint Controllers The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>None</p> <p>The Parties are Independent Controllers of Personal Data</p>

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Description	Details
	<p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Supplier (including the Supplier Personnel) engaged in the performance of the Supplier's duties under this Contract• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under this Contract).
Subject matter of the Processing	Not applicable, the Supplier is not processing Personal Data.
Duration of the processing	Not applicable, the Supplier is not processing Personal Data.
Nature and purposes of the processing	N/A
Type of Personal Data being processed	N/A
Categories of Data Subject	N/A
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	N/A
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway	N/A – Supplier will not be processing Personal Data
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data	N/A

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Description	Details
processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	

Annex 1: Joint Controller Agreement

Not used.

Annex 2: International Data Transfer Agreement and International Data Transfer Agreement Addendum to the EU Commission Standard Contractual Clauses

Not used.

Annex 3: Standard Contractual Clauses for EU GDPR Compliant Transfers

Not used.

Schedule 32

Intellectual Property Rights

1 Intellectual Property Rights – General Provisions

- 1.1 Except as expressly provided for in this Contract or otherwise agreed in writing:
- 1.5.1 the Authority does not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (a) the Supplier Software;
 - (a) the Third Party Software;
 - (b) the Third Party IPRs;
 - (c) the Supplier Background IPRs; and
 - (d) any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR; and
 - 1.5.2 the Supplier does not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (a) the Authority Software;
 - (e) the Authority Data; and
 - (f) the Authority Background IPRs; and
 - 1.5.3 neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks.
- 1.6 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 32 (*Intellectual Property Rights*), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.2 If the Supplier becomes aware at any time, including after the Term, that, in respect of any Deliverable, the Authority has not received the licences to the Supplier Software, the Third Party Software, the Third Party IPRs and the Supplier Background IPRs required by Paragraphs 2, 3 and 5, the Supplier must, within 10 Working Days notify the Authority:
- 1.2.1 the specific Intellectual Property Rights the Authority has not received licences to; and
 - 1.2.2 the Deliverables affected.
- 1.7 Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or Project Specific IPR by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.
- 1.3 Unless otherwise agreed in writing, the Supplier will record in the table at Annex 1 to this Schedule and keep updated throughout the Term:
- 1.3.1 any Specially Written Software and Project Specific IPR; and

1.3.2 where:

- (a) the Specially Written Software or Project Specific IPR adapts Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs; or
- (b) Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs is embedded in, or forms an integral part of, the Specially Written Software or Project Specific IPR;

full details of the Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs.

1.4 For the avoidance of doubt:

1.7.1 except as provided for in Paragraph 2.2.3(c)(ii), the expiry or termination of this Contract does not of itself terminate the licences granted to the Authority under Paragraph 2;

1.7.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

- (a) Sections 55 and 56 of the Patents Act 1977;
- (b) section 12 of the Registered Designs Act 1949; or
- (c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

Option 1

1 Ownership and delivery of IPR created under the Contract

1.5 Subject to Paragraph 4.1.1, the Supplier agrees to:

1.7.3 transfer to the Authority, or procure the transfer to the Authority of all Intellectual Property Rights in the Specially Written Software and Project Specific IPRs, including:

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software,

(together the "**Software Supporting Materials**"); and

1.7.4 execute all such assignments required to transfer properly any rights in the Specially Written Software and Project Specific IPRs to the Authority.

1.6 The Supplier must deliver to the Authority:

1.6.1 the Specially Written Software;

1.6.2 any software elements of the Project Specific IPR;

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1.6.3 relevant Documentation; and

1.6.4 all related Software Supporting Materials,

within 5 Working Days of:

1.6.5 either:

(a) initial release or deployment; or

(a) if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

1.7.5 each subsequent release or deployment of the Specially Written Software and any software elements of the Project Specific IPR.

1.8 Where the Supplier delivers materials to the Authority under Paragraph 1.2, it must do so in a format specified by the Authority. Where the Authority specifies the material is to be delivered on media, the Authority becomes the owner of the media containing the material on delivery.

2. Use of Supplier or Third Party Non-COTS Software or Non-COTS Background IPR

1.7 The Supplier must not use any:

1.7.1 Supplier Non-COTS Software; or

1.7.2 Supplier Non-COTS Background IPR;

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

1.7.3 in the case of Supplier Non-COTS Software and the software elements of Supplier Non-COTS Background IPR, it is:

(a) detailed in Schedule 12 (*Software*); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; and

1.7.4 in the case of non-software elements of Supplier Non-COTS Background IPR, it is approved by the Authority in writing.

1.8 The Supplier must not use any:

1.8.1 Third Party Non-COTS Software; or

1.8.2 Third Party Non-COTS Background IPR,

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

2.1.1 in the case of Third Party Non-COTS Software and the software elements of Third Party Non-COTS Background IPR, it is:

- (a) detailed in Schedule 12 (*Software*); or
- (b) both:
 - (i) submitted to the Technical Board for review; and
 - (ii) approved by the Authority; and
- (c) one of the following conditions is met:
 - (i) the owner or an authorised licensor of the relevant IPR has granted the Authority a direct licence on the terms equivalent to those set out in Paragraph 5; or
 - (i) if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 2.2.3(c)(i), all the following conditions are met:
 - (A) the Supplier has notified the Authority in writing giving details of:
 - (1) what licence terms can be obtained from the relevant third party; and
 - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
 - (B) the Authority approves the licence terms of one of those third parties; and
 - (C) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Authority on those terms; or
 - (ii) if the Supplier cannot meet the conditions in Paragraphs 2.2.3(c)(i) and 2.2.3(c)(ii), the Authority has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved; or

1.8.3 in the case of non-software elements of Third-Party Non-COTS Background IPR, it is approved by the Authority in writing.

3. Use of Supplier or Third Party COTS Software or COTS Background IPR

1.9 The Supplier must not use any:

- 1.9.1 Supplier COTS Software;
- 1.9.2 Supplier COTS Background IPR;
- 1.9.3 Third Party COTS Software; or
- 1.9.4 Third Party COTS Background IPR,

in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

- 3.1.1 in the case of Supplier COTS Software, Third Party COTS Software and the software elements of Supplier COTS Background IPR and Supplier COTS Background IPR, it is either:
 - (a) detailed in Schedule 12 (*Software*); or
 - (b) both:
 - (i) submitted to the Technical Board for review; and
 - (ii) approved by the Authority; and
- 1.9.5 all the following conditions are met:
 - (a) the Supplier has provided the Authority with the applicable terms for the IPRs (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
 - (b) the Authority has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Authority.

2 Licences granted by the Authority

- 2.1 The Authority grants the Supplier a licence to the
 - 2.1.1 the Project-Specific IPR;
 - 2.1.2 the Specially Written Software;
 - 2.1.3 the Authority Software;
 - 2.1.4 the Authority Data; and
 - 2.1.5 the Authority Background IPRsthat:
 - 3.1.2 is non-exclusive, royalty-free and non-transferable;
 - 3.1.3 is sub-licensable to any Sub-contractor where
 - (a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Annex 1 to Schedule 12 (*Software*); and
 - (a) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;
 - 2.1.6 allows the Supplier and any sub-licensee to use, copy and adapt any licensed IPRs for the purpose of fulfilling its obligations under this Contract; and

- 2.1.7 terminates at the later of:
 - (a) the expiry of the Term; or
 - (b) the end of any Termination Assistance Period.
- 3.2 When the licence granted under Paragraph 4.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 4.1.7:
 - 3.2.1 immediately cease all use of the licensed IPR;
 - 2.1.8 either:
 - (a) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the licensed IPR; or
 - (b) if the Authority has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the licensed IPR; and
 - 3.2.2 ensure, so far as reasonably practicable, that any licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

3 Licences in respect of Supplier Non-COTS Software and Supplier Non-COTS Background IPR

- 3.1 Subject to the Authority approving the use of Supplier Non-COTS Software and Supplier Non-COTS Background IPR under Paragraph 2, the Supplier grants the Authority a Supplier Existing IPR Licence on the terms set out in Paragraph 5.3 in respect of each Deliverable where:
 - 3.1.1 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is embedded in the Deliverable;
 - 3.1.2 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is necessary for the Authority to use the Deliverable for any of the purposes set out in Paragraph 5.4; or
 - 3.1.3 the Deliverable is a customisation or adaptation of Supplier Non-COTS Software and Supplier Non-COTS Background IPR.
- 3.2 The categories of Supplier Non-COTS Software and Supplier Non-COTS Background IPR set out in Paragraph 5.1 are mutually exclusive.
- 3.3 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
 - 3.3.1 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR embedded in a Deliverable:
 - (a) has no restriction on the identity of any transferee or sub-licensee;

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- (b) is sub-licensable for any of the purposes set out in Paragraph 5.4;
 - (c) allows the Authority and any transferee or sub-licensee to use, copy and adapt the Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4; and
- 3.3.2 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR that is necessary for the Authority to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
 - (a) allows the Authority and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4;
 - (a) is transferrable to only:
 - (i) a Crown Body;
 - (i) any body (including any private sector body) that performs or carries out any of the functions or activities that the Authority had previously performed or carried out; or
 - (ii) a person or organisation that is not a direct competitor of the Supplier; where that transferee:
 - (ii) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software*); or
 - (iii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*);
 - (b) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier:
 - (b) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software*); or
 - (c) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*);
- 3.3.3 includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Supplier Non-COTS Software and Supplier Non-COTS Background IPR;
- 3.3.4 continues in effect following the expiry or earlier termination of this Contract; and
- 3.3.5 is subject to the restrictions that:
 - (a) no sub-licence granted to the Supplier Non-COTS Software and

Supplier Non-COTS Background IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Authority under this Paragraph; and

- (b) any transferee or sublicensee of the Supplier Non-COTS Software and Supplier Non-COTS Background IPR must either:
 - (i) enter into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software*); or
 - (ii) enter into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*).

3.4 For the purposes of Paragraphs 5.1 and 5.3, the relevant purposes are:

- 3.4.1 to allow the Authority or any End User to receive and use the Deliverables;
- 3.4.2 to commercially exploit (including by publication under Open Licence) the Project Specific IPR, Specially Written Software and Software Supporting Materials; and
- 3.4.3 for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

3.5 Where the legal status of the Authority changes, such that it ceases to be a Crown Body:

- 3.5.1 the Supplier Existing IPR Licence is unaffected; and
- 3.5.2 any successor body of the Authority that is a Crown Body shall have the benefit of the Supplier Existing IPR Licence.

3.3 Where the Supplier Existing IPR Licence is transferred under Paragraph 5.3.1(a) or 5.3.2(b) or there is a change in the Authority's legal status to which Paragraph 5.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the Authority under this Paragraph.

4 Open Licence Publication

4.1 Subject to Paragraph 6.8, the Supplier agrees that the Authority may at its sole discretion publish under Open Licence all or part of the Project Specific IPR, the Specially Written Software or the Software Supporting Materials.

3.4 The Supplier warrants that:

- 4.1.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials are suitable for release under Open Licence;
- 4.1.2 in developing Project Specific IPR, the Specially Written Software or the Software Supporting Materials it has used reasonable endeavours to ensure that:
 - (a) the publication by the Authority will not:
 - (i) allow a third party to use them in to compromise the operation,

running or security of the Specially Written Software, the Project Specific IPRs, the Authority System or the Supplier System;

(ii) cause any harm or damage to any party using them; or

(iii) breach the rights of any third party; and

(a) they do not contain any material which would bring the Authority into disrepute if published.

4.2 The Supplier must not include in the Project Specific IPR, the Specially Written Software or the Software Supporting Materials provided for publication by Open Licence any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR unless the Supplier consents to:

4.2.1 their publication by the Authority under Open Licence; and

3.4.2 their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Authority.

3.5 The Authority will not be liable in the event that any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR is included in the Open Licence Publication Material published by the Authority

4.3 The Supplier must supply any or all the Project Specific IPR, the Specially Written Software or the Software Supporting Materials in a format (whether it is provided in any other format or not) suitable for publication under an Open Licence (the "**Open Licence Publication Material**") within 30 Working Days of written request from the Authority ("**Authority Open Licence Request**").

4.4 The Supplier may within 15 Working Days of Authority Open Licence Request under Paragraph 6.5 request in writing that the Authority excludes all or part of:

4.4.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials Items; or

4.4.2 the Supplier Software, the Third Party Software, the Third Party IPRs, the Supplier Background IPRs, or any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR that would otherwise be included in the Open Licence Publication Material supplied to the Authority pursuant to Paragraph 6.5,

from Open Licence publication.

4.5 The Supplier's request under Paragraph 6.5 must include the Supplier's assessment of the impact the Authority's agreeing to the request would have on its ability to publish other Project Specific IPR, Specially Written Software or Software Supporting Materials under an Open Licence.

4.6 Any decision to Approve any such request from the Supplier under Paragraph 6.5 shall be at the Authority's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

