# TIER 3 Model ICT Contract

TERMS AND CONDITIONS

|  |  |
| --- | --- |
| **DATED** | 05/09/2019 |

**(1) *THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS***

**and**

**(2) Exela Technologies Ltd**

|  |  |  |
| --- | --- | --- |
|  | **AGREEMENT**  relating to  Cheque Processing |  |

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**THIS AGREEMENT** is made on 20

**BETWEEN:**

**(1) *THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS*** of 100 Parliament Street, Westminster, London SW1A 2BQ (the **“Authority”**); and

**(2) Exela Technologies Ltd** a company registered in England and Wales under company number 01283512 whose registered office is at Baronsmede House, 20, The Avenue, Egham, Surrey, TW20 9AB (the **“Supplier”**),

(each a “**Party**” and together the “**Parties**”).

**INTRODUCTION**

(A) The Authority is responsible for the UK's tax administration and ensures that tax revenue is available to fund the UK’s public services. The Authority wishes to procure a cheque and forms processing solution which allows all cheques and associated forms to be scanned and fully processed. The desired modle is for The Authority to host and operate scanners, whilst the supplier hosts and manages the associated processing software.

(B) The Supplier is a leading provider of business process automation and has experience in the processing of cheques.

(C) the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

# SECTION A - PRELIMINARIES

# DEFINITIONS AND INTERPRETATION

## In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1(*Definitions*) or the relevant Schedule in which that capitalised expression appears.

## In this Agreement, unless the context otherwise requires:

### the singular includes the plural and vice versa;

### reference to a gender includes the other gender and the neuter;

### references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

### a reference to any Law includes a reference to that Law as amended, extended, consolidated or re‑enacted from time to time including any implementing or successor legislation;

### 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”;

### 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;

### the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

### unless otherwise provided and save for references in Annexes 1 to 2 of Schedule 5 (*IPR*) and in Schedule 10 (*Guarantee*):

### references to Clauses and Schedules are references to the clauses and schedules of this Agreement;

### references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and

### references to this Agreement are references to this Agreement as amended from time to time.

## Where a standard, policy or document is referred to in this Agreement 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 Agreement with a reference to the replacement hyperlink.

## If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

### the Clauses and Schedule 1 *(Definitions*);

### Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;

### any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);

### Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and

### any other document referred to in this Agreement or any other document attached to this Agreement.

## The Schedules and their Annexes form part of this Agreement.

## In entering into this Agreement the Authority is acting as part of the Crown.

# DUE DILIGENCE

## The Supplier acknowledges that:

### the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

### it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information and the processes and requirements of the Authority;

### it has satisfied itself, whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date; and

### it has entered into this Agreement in reliance on its own due diligence.

## The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

### any unsuitable aspects of the Operating Environment;

### any misinterpretation of the Authority Requirements; and/or

### any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

# WARRANTIES

## The Authority represents and warrants that:

### it has full capacity and authority to enter into and to perform this Agreement;

### this Agreement is executed by its duly authorised representative;

### there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

### its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

## The Supplier represents and warrants that:

### it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

### it has full capacity and authority to enter into and to perform this Agreement;

### this Agreement is executed by its duly authorised representative;

### it has all necessary consents and regulatory approvals to enter into this Agreement;

### there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

### its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

### its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

### all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the SQ and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

### in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;

### it has notified the Authority in writing of any Occasions of Tax Non‑Compliance and any litigation, enquiry or investigation in which it or its Subcontractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non‑Compliance;

### it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub‑contractor) to the Authority which are necessaryfor the performance of the Supplier’s obligations under this Agreement and/or the receipt of the Services by the Authority;

### the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;

### it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; [and]

### no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue; and

### that neither the Supplier nor any of its officers, employees or Sub-contractors:

### has been convicted of any offence involving slavery and human trafficking; and

### having made reasonable enquiries and to the best of its knowledge, has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) and throughout the Term by reference to the facts then existing.

## Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

## If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue, or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

## For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

## Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

# SECTION B – THE SERVICES

# TERM

## This Agreement shall:

## come into force on the Effective Date of 5 September 2019, or on a date to be agreed between the Parties, save for Clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 21 (Confidentiality), 22 (Transparency and Freedom of Information), 24 (Publicity and Branding), 25 (Limitations on Liability), 37 (Waiver and Cumulative Remedies), 38 (Relationship of the Parties), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights), 44 (Notices), 46 (Disputes) and 48 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and

## subject to Clause 4.2, unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate at the end of the Initial Term of three years.

## The Authority shall have the right, at its sole discretion, to extend the Initial Term for periods of not more than twelve (12) months (each an **"Extension Period"**), for a maximum of two (2) years in the aggregate, by giving to the Supplier not less than three (3) months' written notice before the end of the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority, as appropriate).

## The duration of any extension to the Term of this Agreement made in accordance with Clause 4.2 and the effect of extending the Initial Term (and any extension thereof) for the Extension Period shall be considered, documented and agreed by the Parties in accordance with the Change Control Procedure. Unless the Parties agree otherwise in writing, each Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

**Condition Precedent**

## NOT USED

## NOT USED

## NOT USED

# SERVICES

## **Standard of Services**

## The Supplier shall provide:

* + 1. The Implementation Services from (and including) the Implementation Services Commencement Date; and
    2. The Operational Services, in each case, from (and including) the relevant Operational Services Commencement Date.

## The Supplier shall ensure that:

## (a) the Services:

#### comply in all respects with the Services Description; and

#### are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and

### where:

#### the Services to be provided from any Operational Service Date are similar to services that the Authority (and any Service Recipient and/ or a Service Beneficiary, as appropriate) was receiving immediately prior to that Operational Service Date (such similar services being “**Preceding Services**”); and

#### the standard and level of service received by the Authority (and any Service Recipient and/ or a Service Beneficiary, as appropriate) in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

## the Services to be provided from the relevant Operational Service Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority (and any Service Recipient and/ or a Service Beneficiary, as appropriate) in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Date.

## The Supplier shall:

### perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

### all applicable Law;

### Good Industry Practice;

### the Standards;

### the Baseline Security Requirements;

### the Quality Plans;

### the Authority IT Strategy; and

### the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi);

### deliver the Services using efficient business processes and ways of working having regard to the Authority’s obligation to ensure value for money; and

### comply with its obligations under Schedule 11 (*Collaboration*).

## In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

## **Supplier Covenants**

## The Supplier shall:

### at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement,

### save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

### ensure that:

#### it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub‑contractor) to the Authority which are necessaryfor the performance of the Supplier’s obligations under this Agreement and/or the receipt of the Services by the Authority;

#### the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or Upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;

#### all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification; and

#### any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and

#### the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;

### minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;

### ensure that any Documentation and training provided by the Supplier to the Authority and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;

### without limitation to its obligations under Schedule 11 (*Collaboration*), co‑operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition/ implementation of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

### provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;

### gather, collate and provide such information and co‑operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier’s compliance with its obligations under this Agreement;

### notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;

### notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

### ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier’s obligations under this Agreement.

## An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub‑contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

### remedy any breach of its obligations in Clauses 5.5(b) and Clause 5.5(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

### remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(f) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

### meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

**Specially Written Software warranty**

## Without prejudice to Clauses 5.5 and 5.7 (*Supplier Covenants*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

### be free from material design and programming errors;

### perform in all material respects in accordance with the relevant specifications contained in:

### the Service Description;

### the Supplier Solution; and

### the Documentation

### interface with the Authority Systems and deliver the required functionality and interoperability; and

### not infringe any Intellectual Property Rights.

**Continuing obligation to provide the Services**

## The Supplier shall continue to perform all of its obligations under this Agreement, and shall not suspend the supply of the Services, notwithstanding:

### any withholding of the Service Charges by the Authority pursuant to Clause 7.2 (*Performance Failures)*;

### the existence of an unresolved Dispute; and/or

### any failure by the Authority to pay any Charges,

### unless the Supplier is entitled to terminate this Agreement under Clause 33.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

**Optional Services**

## The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

## If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

## Following receipt of the Authority’s notice pursuant to Clause 5.10:

### the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

### the Supplier shall implement and Test the relevant Optional Services in accordance with a implementation plan which the Parties shall agree in respect of such Optional Services (**"Optional Services Implementation Plan"**);

### any additional charges for the Optional Services shall be incorporated in the Charges as specified in [Paragraph 3 of Part B] of Schedule 7.1 (*Charges and Invoicing*); and

### the Supplier shall, from the date agreed in the Optional Services ImplementationPlan for the Optional Services (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

**Authority Responsibilities**

## The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

**Scope**

## The Supplier acknowledges and agrees that:

### its relationship with the Authority is not exclusive;

### the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

## 

# QUALITY PLANS, IMPLEMENTATION AND PROJECTS

**Quality Plans**

## The Supplier shall:

## no later than twenty (20) Working Days after the Effective Date, submit to the Authority for approval a quality plan for the Implementation activities specified in the Implementation Plan;

## within (*40)* Working Days of the Effective Date, submit to the Authority for approval a quality plan for Services set out in Schedule 2.1 (*Services Description*),

## the purpose of which are to ensure that all aspects of the Implementation and Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (“**Quality Plans**”).

## The Supplier shall obtain the Authority Representative’s written approval of the Quality Plans before implementing them. If the Authority does not approve a Quality Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within ten (10) Working Days revise the Quality Plan taking those reasons into account and shall re submit the revised plan to the Authority for the Authority's approval. The Authority shall not unreasonably withhold or delay its approval of the Quality Plan.

## The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

## Following the approval by the Authority of the Quality Plans:

### the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and

### any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

**Implementation Plan and Delays**

## The Parties shall comply with the provisions of Schedule 6.1 (*Implementation)* in relation to the agreement and maintenance of the Implementation Plan.

## The Supplier shall:

### comply with the Implementation Plan; and

### ensure that each Milestone is Achieved on or before its Milestone Date.

## If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

### it shall:

#### notify the Authority (and any applicable Service Recipients and/or Service Beneficiaries) in accordance with Clause 27.1 (*Rectification Plan Process*); and

#### comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

#### use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

### if the Delay or anticipated Delay relates to a Key Milestone, it shall:

### comply with the Rectification Plan Process to address the impact of the Delay or anticipated Delay; and

### the provisions of Clause 28 (*Delay Payments*) shall apply.

**Testing and Achievement of Milestones**

## The Parties shall comply with the provisions of Schedule 6.2 (*Test and Assurance)* in relation to the procedures to determine whether a Milestone or Test has been Achieved.

## No Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

**Projects**

## If requested by the Authority, the Supplier shall provide any Project as agreed with the Authority in accordance with Schedule 6.3 (*Projects and Ordering*).

# PERFORMANCE INDICATORS

## The Supplier shall:

### provide the Operational Services and otherwise perform the Services and its other activities under this Agreement in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator and, where relevant, from the Milestone Date for each relevant CPP Milestone; and

### comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

**Performance Failures**

## If in any Service Period:

### a KPI Failure occurs, the relevant Service Credits shall be deducted from the Service Charges in accordance with Paragraphs 3, 4 and 5 of Part C of Schedule 7.1 (*Charges and Invoicing*);

### any Performance Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition, and without prejudice, to any Service Credits accruing in accordance with Clause 7.2(a)); and/or

### a SPI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring.

* 1. The Parties agree that, where a sum is expressed to be due from the Supplier to the Authority as a Service Credit:
     1. such sums are a price adjustment to reflect the actual quality of service provided to the Authority and do not represent an estimate of the loss or damage that may be suffered by the Authority in respect of the breach of the Performance Indicators and/or the Performance Failure which gives rise to the Service Credit; and

## the crediting of such sums is, and shall be, without prejudice to any other right, remedy, or entitlement which the Authority may have under this Agreement (including but not limited to the right to claim damages from the Supplier relating to any loss arising from such failure to achieve the relevant Target Performance Level).

**Unacceptable Performance Failure**

## If in any Service Period an Unacceptable Performance Failure occurs or is determined:

### the Authority shall be entitled to withhold and retain as compensation for the Unacceptable Performance Failure a proportionate part (decided by the Authority in its absolute discretion) of any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable Performance Failure**”); and

### if the Authority withholds and retains such Compensation for Unacceptable Performance Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

## provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable Performance Failure.

## The Supplier:

### agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable Performance Failure occurs; and

### acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

## In the event of a Critical KPI Failure or an Unacceptable Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 33.1 or 33.2 (*Termination by the Authority*).

**Changes to Performance Indicators and Service Credits**

## The provisions of paragraph 2 of Part A of Schedule 2.2 (*Performance Levels*) shall apply in relation to any changes to be made to Performance Indicators and Service Credits.

# SERVICES IMPROVEMENT

## The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Operational Board at least once every (12) months (or more frequently in the event that the Supplier identifies or is made aware of significant improvements in or in connection with the Services prior to the next report which is due to be provided pursuant to this Clause 8.1) on:

### the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

### new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

### new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;

### changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

### changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

## The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented and shall be provided together with a Gainshare Report which includes the information set out in Part B (*Savings Initiatives*) of Schedule 7.3 (*Value for Money*). The Supplier shall provide any further information that the Authority requests.

## If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

# ASSETS, EQUIPMENT, MAINTENANCE, AND SUPPLY OF GOODS.

**Assets**

## The Parties shall comply with the provisions of Schedule 4.5 (*Assets*) in relation to the transfer of Assets.

**Supplier Equipment**

## The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off‑loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements. For the avoidance of doubt, the Supplier shall ensure that all Supplier Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations (“WEEE”) and that all Supplier Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Supplier Equipment as required by WEEE.

## All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.

## Subject to any express provision of the BCDC Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

**Maintenance**

## The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule”)** which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.

## The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

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

**Supply of Goods**

## Where, as part of the Services, the Supplier is to sell goods or equipment (“**Goods**”) to the Authority:

### the relevant Goods and their prices shall be as set out in Schedule 7.1, Charges and Invoicing

### the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;

### the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;

### if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and

### without prejudice to any other rights or remedies of the Authority the risk and title in the Goods shall pass to the Authority at the time of delivery or such earlier time as required at the Authority’s sole discretion.

# SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

# FINANCIAL AND TAXATION MATTERS

**Charges and Invoicing**



## Subject to Clause 10.2, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).

## Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall:

## Comply with UK GAAP or the EU endorsed International Financial Reporting Standard; and

## procure discrete purchase order numbers from the Authority for each Service and/ or Project prior to the commencement of any Services (including Projects) and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:

### the Supplier does so at its own risk; and

### the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.

## Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.8 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and Clause 30 (*Step*‑*In Rights*).

## If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**Set**‑**off and Withholding**

## The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

## If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.5 or 7.4(a) it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority’s reasons for withholding or retaining the relevant Charges.

**Value For Money**

* 1. The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*) in relation to the benchmarking of any or all of the Services, gain share mechanism and savings initiative in relation to the provision of the Services.

**Financial Distress**

## The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

**Promoting Tax Compliance**

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

## The Supplier shall at all times comply with all other Laws and regulations relating to Tax.

## The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor.  Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or Sub-contractor.

## Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.

## If, at any point during the Term, an Occasion of Tax Non‑Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:

### notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

### promptly provide to the Authority:

#### details of the steps which the Supplier is taking to address the Occasion of Tax Non‑Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

#### such other information in relation to the Occasion of Tax Non‑Compliance as the Authority may reasonably require.

## The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement.  Any amounts due under this Clause 10.14 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

## The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

## If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.10 to 10.15 (inclusive) then this shall constitute a Supplier Termination Event.

## The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15.

**Use of Off-shore Tax Structures**

## Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract (**“Prohibited Transactions”**). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.

## The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.

## In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.

## Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

# SECTION D - CONTRACT GOVERNANCE

# GOVERNANCE



## The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

**Representatives**

## Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

## The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

## The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

# RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

## The Supplier shall comply with the provisions of:

### Schedule 8.2 (Reports and Records) in relation to the production of reports and the maintenance and retention of Records; and

### Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

## The Parties shall comply with the provisions of:

### Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

### Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

# CHANGE

**Change Control Procedure**

## Any requirement for a Change shall be subject to the Change Control Procedure as set out in Schedule 8.3 (*Change Control Procedure*).

**Change in Law**



## The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of a Change in Law.

## Without prejudice to clause 13.2, each Party shall monitor and shall keep the other Party informed in writing of any Change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

# SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

# SUPPLIER PERSONNEL

## The Supplier shall:

### provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

### ensure that all Supplier Personnel:

#### are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

#### are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);

#### comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and

#### meet the training and awareness requirements set out in paragraph 23.2 (f); and

### subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

### be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

### use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

### replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

### bear the familiarisation and other costs associated with any replacement of any Supplier Personnel; and

### procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

## If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

### refuse admission to the relevant person(s) to the Authority Premises; and/or

### direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

**Key Personnel**

## The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

## The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

## The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

### requested to do so by the Authority;

### the person concerned resigns, retires or dies or is on maternity or long term sick leave;

### the person’s employment or contractual arrangement with the Supplier or a Sub contractor is terminated for material breach of contract by the employee; or

### the Supplier obtains the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed).

## The Supplier shall:

### notify the Authority promptly of the absence of any Key Personnel (other than for short‑term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

### ensure that any Key Role is not vacant for any longer than ten (10) Working Days; and

### ensure that any replacement for a Key Role:

#### has a level of qualifications and experience appropriate to the relevant Key Role; and

#### is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

**Employment Indemnity**

## The Parties agree that:

### the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

### the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority’s employees, agents, consultants and contractors.

**Income Tax and National Insurance Contributions**

## Where the Supplier or any Supplier Personnel are liable to Tax in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

### at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;

### indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and

### provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.8(a) or why Clause 14.8(a) does not apply to the Supplier (including such specific information as the Authority may request),

### and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.8 then this shall constitute a Supplier Termination Event.

## The Authority may internally share any information which it receives under Clause 14.8(c).

**Staff Transfer**

## The Parties agree that:

### where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:

#### where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;

#### where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;

#### where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and

#### Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;

### where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and

### Part D of Schedule 9.1 (*Staff Transfer*) may apply on the expiry or termination of the Services or any part of the Services.

# SUPPLY CHAIN RIGHTS AND PROTECTIONS

**Appointment of Key Sub‑contractors**

1. 1. Where the Supplier wishes to enter into a Key Sub‑contract or replace a Key Sub‑contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub‑contractor if it reasonably considers that:
      1. the appointment of a proposed Key Sub‑contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
      2. the proposed Key Sub‑contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
      3. the proposed Key Sub‑contractor employs unfit persons; and/or
      4. the proposed Key Sub‑contractor should be excluded in accordance with Clause 15.14.
   2. In making a request pursuant to Clause 15.1, the Supplier shall provide the Authority with the following information about the proposed Key Sub‑contractor:
      1. its name, registered office and company registration number;
      2. a copy of the proposed Key Sub‑contract;
      3. the purposes for which the proposed Key Sub‑contractor will be employed, including the scope of any services to be provided by the proposed Key Sub‑contractor;
      4. if relevant, confirmation that the Key Sub‑contract requires the proposed Key Sub‑contractor to comply with any relevant service levels;
      5. where the proposed Key Sub‑contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub‑contract has been agreed on "arms‑length" terms; and
      6. any further information reasonably requested by the Authority.
   3. The Supplier shall record details of all Sub-contractors it has appointed in Schedule 4.3 (Notified Sub-contractors and Key Sub-contractors) and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts).
   4. The Supplier shall notify the Authority if and to the extent to which any Key Sub‑contractor has or intends to sub‑contract to a third party any of the services it provides to the Supplier under the terms of the Key Sub‑contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub‑contractor provides to the Authority, a copy of the contract between the Key Sub‑contractor and the third party.

**Sub-contracts**

* 1. The Supplier shall ensure that each Sub‑contract shall include:
     1. provisions which will enable the Supplier to discharge its obligations under this Agreement;
     2. a right under CRTPA for the Authority to enforce any provisions under the Key Sub‑contract which are capable of conferring a benefit upon the Authority;
     3. a provision enabling the Authority to enforce the Sub‑contract as if it were the Supplier;
     4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub‑contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
     5. obligations no less onerous on the Sub‑contractor than those imposed on the Supplier under this Agreement in respect of:
        1. data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
        2. FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
        3. the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(k) (Services);
        4. the keeping of records in respect of the services being provided under the Key Sub‑contract, including the maintenance of Open Book Data;
        5. the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
        6. the reporting requirement set out in paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
        7. the tax compliance requirements set out in Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*);
        8. the use of off-shore tax structures set out in Clauses 10.18 to 10.20 (inclusive) (*Use of Off-shore Tax Structures*);
        9. the disclosure of Confidential Information set out in Clause 21.3 (Confidentiality); and
        10. the slavery and human trafficking compliance requirements set out in Clause 35.5 (Modern Slavery Act).
     6. provisions enabling the Supplier to terminate the Sub‑contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
     7. a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step‑in on substantially the same terms as are set out in Clause 30 *(Step*‑*in Rights*); and
  2. The Supplier shall not terminate or materially amend the terms of any Sub‑contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
  3. At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:
     1. a copy of any Sub‑contract; and
     2. any further information relating to that Sub‑contract as reasonably requested by the Authority.

**Key Sub-contracts**

* 1. Without prejudice and in addition to the provision in Clauses 15.5 to 15.7, the Supplier shall ensure that each Key Sub‑contract shall include a provision requiring all Key Sub‑contractors to:
     + 1. promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
          1. the occurrence of a Financial Distress Event in relation to the Key Sub‑contractor; or
          2. any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub‑contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub‑contractor first becomes aware of such); and

* + 1. a provision restricting the ability of the Key Sub‑contractor to sub‑contract all or any part of the services provided to the Supplier under the Key Sub‑contract without first seeking the written consent of the Authority;
    2. a provision requiring the Key Sub‑contractor to participate in, and if required by the Authority in the relevant Related Third Party Dispute Initiation Notice to procure the participation of all or any of its Sub‑contractors in, the Related Third Party Dispute Resolution Procedure.
    3. co‑operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

**Supply chain protection**

* 1. The Supplier shall ensure that all Sub‑contracts (which in this sub‑clause includes any contract in the Supplier’s supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
     + 1. requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
     1. that if the Supplier or other party fails to consider and verify an invoice in accordance with sub‑paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub‑paragraph (c) after a reasonable time has passed;
     2. requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub‑contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
     3. giving the Authority a right to publish the Supplier’s compliance with its obligation to pay undisputed invoices within the specified payment period;
     4. granting the Supplier a right to terminate the Sub‑contract if the relevant Sub­contractor fails to comply, in the performance of its Sub‑contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub‑contractor includes a provision having the same effect in any sub‑contract which it awards;
     5. requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 1.1(b)(vii) of Schedule 8.2 (Reports and Records); and
     6. requiring the Sub‑contractor to include a clause to the same effect as this Clause 15.9 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
  2. The Supplier shall:
     1. pay any undisputed sums which are due from it to a Sub‑contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
     2. include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.1(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
  3. Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub‑contractor’s undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
  4. The Supplier shall, and shall ensure that any of its Sub‑Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub‑Contractors for the purposes of monitoring and/or better understanding of the Services.

**Amendment of Sub‑contracts**

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

**Exclusion of Sub**‑**contractors**

* 1. Where the Authority considers whether there are grounds for the exclusion of a Sub‑contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

(a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub‑contractor;

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

**Exclusion of Key Sub-contractors**

* 1. The Authority, at its sole discretion, may require the Supplier to terminate a Key Sub‑contract where:
     + 1. the acts or omissions of the relevant Key Sub‑contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);
       2. the relevant Key Sub‑contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Key Sub‑contractor’s obligations in relation to the Services or otherwise;
       3. the relevant Key Sub‑contractor has failed to comply in the performance of its Key Sub‑contract with legal obligations in the fields of environmental, social or labour law;
       4. the relevant Key Sub-contractor has failed to comply with the terms of its Key Sub-contract equivalent to those set out at Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*); and/or
       5. the relevant Key Sub-Contractor has failed to comply with the terms of its Key Sub-Contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (Use of Off-shore Tax Structures);
       6. the Authority has found grounds for exclusion of the Key Sub‑contractor in accordance with Clause 15.14;
       7. there is a change of Control of the relevant Key Sub‑contractor, unless:
          1. the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
          2. the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control; and or
       8. the relevant Key Sub-contractor has failed to comply with the terms of the Key Sub-contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*).

**Competitive Terms**

* 1. If the Authority is able to obtain from any Sub‑contractor or any other third party (on a like‑for‑like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
     1. require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
     2. subject to Clause 15.15, enter into a direct agreement with that Sub‑contractor or third party in respect of the relevant item.
  2. If the Authority exercises either of its options pursuant to Clause 15.16, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
  3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
     1. the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
     2. any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

**Retention of Legal Obligations**

* 1. Notwithstanding the Supplier's right to sub‑contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub‑contractors and the acts and omissions of those employed or engaged by the Sub‑contractors as if they were its own.

# SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

# INTELLECTUAL PROPERTY RIGHTS

* 1. Except as expressly set out in this Agreement:
     1. the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors: and
     2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.

**Project Specific IPR and Specially Written Software**

16.2 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software.

16.3 The assignment under Clause 16.2 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.

16.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.

16.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to effect the assignment under Clause 16.2.

16.6 The Authority shall grant to the Supplier a non-exclusive royalty-free licence of the Project Specific IPRs and the Specially Written Software to enable the Supplier to provide the Services during the Term.

16.7 Nothing in this Agreement shall require the assignment by the Supplier of title in the Supplier Software to the Authority.

16.8 Unless the Authority otherwise agrees in advance in writing:

(a) all Specially Written Software and Project Specific IPRs (which are in the nature of software) shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and

(b) where the Specially Written Software and Project Specific IPRs (which are in the nature of software) are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.

1. **LICENCES GRANTED BY THE SUPPLIER**
   1. *Redacted*
      1. the Supplier Software, including the Supplier COTS Software and Supplier Non-COTS Software;
      2. the Supplier Background IPR, including the Supplier Background COTS IPR and the Supplier Background Non-COTS IPR;
      3. the Third Party Software, including Third Party COTS Software and Third Party Non-COTS Software and
      4. Third Party Background IPR, including Third Party COTS Background IPR and Third Party Non-COTS Background IPR.

17.2 The licence to use the Supplier COTS Software and Supplier COTS Background IPRs shall be agreed on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (IPR) signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign or novate the licences on equivalent terms to those set out in Clauses 17.4 (d) and (e).

* 1. The Supplier shall extend the rights granted to the Authority and the Government Controlled Company under Clause 17.1 (including as to indemnification against IPRs Claims) to their respective contractors and sub-contractors for the duration of the Term and any Extension Periods solely for the purpose of providing services to the Authority or the Government Controlled Company.
  2. The licences in Clause 17.1:
     1. are granted for any purpose relating to the Services (or substantially equivalent services); or
     2. are granted for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function;
     3. includes the right to sub-license the rights granted to it to a third party (including for the avoidance of doubt any Replacement Supplier) on no less favourable terms than granted to the Authority and the Government Controlled Company (including as to indemnification against IPRs Claims) for the benefit of the Authority and or the Government Controlled Company provided such third party has entered into a confidentiality undertaking with the Authority and or the Government Controlled Company;
     4. includes the right for the Authority to:
        1. assign, novate or otherwise dispose of its rights and obligations to any other body (including any other Central Government Body and or any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
        2. transfer the licences to other machines or users within the Authority.

17.5 For the avoidance of doubt any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.1 and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).

* 1. The Supplier hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.
  2. Where the Supplier wishes to use Software and or Intellectual Property Rights of the Supplier (or licensed to the Supplier) in the delivery of the Services, not already set out in Schedule 5 (IPR), it shall notify the Authority of the same and the Parties may agree to update Schedule 5 (IPR) in accordance with the Change Control Procedure.

**Third Party Software and Third Party IPRs**

1. 1. The Supplier shall not use in the provision of the Services any Third Party Non‑COTS Software or Third Party Non‑COTS IPRs unless in each case it has:
      1. first procured that the owner or an authorised licensor of the relevant Third Party Non‑COTS IPRs or Third Party Non‑COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty‑free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.1 (Licences Granted by the Supplier) and Clause 17.4 (d) and (e) (*Authority’s right to sub-licence and assign/novate licences*); or
      2. complied with the provisions of Clause 17.11.
   2. If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non‑COTS Software and/or Third Party Non‑COTS IPRs in accordance with the licence terms set out in Clause 17.1, the Supplier shall:
      1. notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
      2. use the relevant Third Party Non‑COTS Software and/or Third Party Non‑COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

**Termination and Replacement Suppliers**

* 1. For the avoidance of doubt, the termination or expiry of this Agreement shall result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

**Patents**

* 1. Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs or Concealed 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, material or software solely for the purpose for which they were delivered under this Agreement.
  2. **Upgrades**

The Supplier shall provide Upgrades to the Supplier Software and Third Party Software provided as part of the Supplier Solution and in accordance with Good Industry Practice at no additional cost to the Authority, and shall ensure that the Supplier Software shall be Upgraded within six (6) months of the release of the latest version, such that it is no more than one (1) major version level below the latest release (normally codified as running software no older than the 'n‑1 version') throughout the Term unless otherwise agreed with the Authority in writing.

## **Escrow**



## The Supplier shall where relevant and on request by the Authority, have the Supplier Software and Third Party Software used exclusively for providing Services to the Authority in which it owns the Intellectual Property Rights placed in escrow with the escrow agent NCC Group, its successor or such other comparable organisation on terms and conditions which are not materially adversely different to the standard NCC tripartite escrow agreement terms and conditions at all times on the Customer's request and at the cost of the Authority.

## The Supplier agrees that trigger events to be included in the agreement with the escrow agent referred to in Clause 17.17 shall include the following:

## a Supplier breach has created a material interruption or disruption in the provision of the Services;

## a regulator advises that step in is necessary or desirable; and

## the Supplier suffering an Insolvency Event.

## On the occurrence of a "trigger event", the Supplier shall grant to the Authority a royalty free, licence for the Term to transfer an instance of the Software on to the Authority System and to use, copy, modify and adapt (with a right to sub licence such rights to any Service Recipients and/or Service Beneficiaries or other third parties engaged) such Software. Such licence shall last only for such period as is reasonable for the Authority to put in place an alternative service delivery solution, whether provided by the Authority itself or a third party.

1. **LICENCES GRANTED BY THE AUTHORITY**
   1. The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
      1. the Authority Software;
      2. the Authority Background IPR;
      3. the Authority's documentation, processes and procedures;
      4. the Authority's Know-How; and
      5. the Authority Data.
   2. The licence granted in Clause 18.1:
      1. includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (Confidentiality); and
      2. is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
   3. In the event of the termination or expiry of this Agreement, the licence referred to in Clause 18.1 and any sub-licence granted in accordance with Clause 18.2(a) shall terminate automatically and the Supplier and all Sub-contractors shall deliver to the Authority all material licensed to the Supplier pursuant to Clause 18.1 or Clause 18.2(a) in the Supplier's possession or control.
2. **IPRs INDEMNITY**
3. 1. The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
   2. If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
      1. procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
      2. replace or modify the relevant item with non‑infringing substitutes provided that:
         1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
         2. the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
         3. there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
         4. the terms and conditions of this Agreement shall apply to the replaced or modified Services.
   3. If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:
      1. the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
      2. without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

**19A OPEN SOURCE PUBLICATION**

19A.1 The Supplier agrees that the Authority may publish, at its sole discretion, as Open Source software all or part of the Specially Written Software and the Project Specific IPRs (which are in the nature of software) after the Operational Service Date.

19A.2 The Supplier hereby warrants that the Specially Written Software and the Project Specific IPRs (which are in the nature of software):

(a) are suitable for release as Open Source and that any release shall not allow a third party to use the Open Source software to in any way compromise the operation, running and security of the Specially Written Software, the Project Specific IPRs or the Authority System;

(b) shall not knowingly or recklessly cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs (which are in the nature of software) have been tested using the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor;

(c) do not include or use any Open Source software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the Specially Written Software and the Project Specific IPRs, nor do the Specially Written Software and the Project Specific IPRs operate in such a way that it is compiled with or linked to any of the foregoing;

(d) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;

(e) do not contain any Non‑Party IPRs which are not licensed to the Authority under clause 17.10; and

(f) will be supplied in a format suitable for publication as Open Source (**"Open Source Publication Material"**) no later than the date in sub‑clause 19A.1.

19A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Background IPRs save that any Supplier Background IPRs that the Supplier is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Supplier hereby acknowledges and agrees that any such Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

19A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non‑Party IPRs arising from publication of the Specially Written Software and the Project Specific IPRs (which are in the nature of software) as Open Source under clause 19A.1.

# AUTHORITY DATA AND SECURITY REQUIREMENTS



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

## Save as required by Clause 23.2(a), the Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

## To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).

## The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub‑contractor.

## The Supplier shall perform and maintain secure back‑ups of all Authority Data and shall ensure that up‑to‑date back‑ups are stored off‑site in accordance with the BCDC Plan. The Supplier shall ensure that such back‑ups are available to the Authority (or to such other person as the Authority may direct) at no additional cost to the Authority, and that the data contained in the back‑ups are available at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

## The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back‑up data, is a secure system that complies with the Security Requirements.

## If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

### require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Capability*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority’s notice; and/or

### itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Capability*).

## If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

## The Supplier may use, implement or permit the implementation of cloud computing technology (meaning a solution whereby the Authority Data is stored on servers that are not owned, leased or operated by the Supplier) by any supplier or any Sub‑contractor, only with the prior written consent of the Authority Representative.

## The Supplier shall and shall procure that its Sub‑contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

## The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

## If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

## Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.12 the Supplier shall continue to perform the Services in accordance with its existing obligations.

**Malicious Software**

## The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Authority, use the latest versions of anti‑virus definitions and software available from an industry accepted anti‑virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of anti‑virus software being used in certain circumstances, e.g. in response to a specific threat.

## Notwithstanding Clause 20.14, if Malicious Software is found, the Parties shall co‑operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

## Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.15 shall be borne by the Parties as follows:

### by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.14) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

### otherwise by the Authority.

**Obligations under the Finance Act 1989, the Commissioners for Revenue and Customs Act 2005 and the Social Security Administration Act 1992**

## The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub‑contractors and Supplier Personnel shall duly observe:

### the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and

### Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier’s obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

## The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.17 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

## The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

# CONFIDENTIALITY

## For the purposes of this Clause 21, the term **“Disclosing Party”** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **“Recipient”** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

## Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

### treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

### not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

### not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and

### immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.

## The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

### the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

### the need for such disclosure arises out of or in connection with:

#### any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

#### the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or

#### the conduct of a Central Government Body review in respect of this Agreement; or

### the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

## If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

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

### Supplier Personnel who are directly involved in the provision of theServices and need to know the Confidential Information to enable performance of the Supplier’s obligations under this Agreement;

### its auditors; and

### its professional advisers for the purposes of obtaining advice in relation to this Agreement.

## Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

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

### on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

### to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

### to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

### on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;

### on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step‑in rights pursuant to Clause 30 (*Step*‑*In Rights*) and Exit Management rights; or

### on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

### and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 21.

## Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know‑how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

# TRANSPARENCY AND FREEDOM OF INFORMATION

## The Parties acknowledge that:

### the Transparency Reports; and

### the content of this Agreement, including any Changes to this Agreement agreed from time to time except for:

### any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

## Commercially Sensitive Information;

## (together the "Transparency Information") are not Confidential Information.

## Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

## The Supplier shall assist and co‑operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.2 (*Reports and Records*).

## If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

## The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

## The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

## The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re‑use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:

### provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

### transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

### provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

### not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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

# PROTECTION OF PERSONAL DATA

## With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is the Controller and that the Supplier is the Processor, and that the Processing may not be determined by the Supplier.

## The Supplier shall:

### not Process or transfer the Personal Data other than in accordance with the Authority's written instructions, as set out in Schedule 2.8 (*Data Processing and List of Sub-processors*), unless required by EU or member state law or UK Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data, unless prohibited by law;

### acknowledge that the provision of the Services involves the Processing of the types of Personal Data and categories of Data Subject set out in Part 1 of Schedule 2.8 (*Data Processing and List of Sub-processors*), and shall, with the Authority’s written consent, update the details in Schedule 2.8 (*Data Processing and List of Sub-processors*) from time to time as necessary;

### ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements)* and having regard to the*;*

* + - 1. nature of the data to be protected;
      2. harm that might result from a Personal Data Breach;
      3. state of technological development; and
      4. cost of implementing any measures;

### not disclose or transfer the Personal Data and/or Sanitised Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data and/or Sanitised Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);

### take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and/or Sanitised Personal Data and ensure that the Supplier Personnel:

### are aware of and comply with the Supplier’s duties under this Clause 23 and Clauses 20 (Authority Data and Security Requirements) and 21 (Confidentiality);

### are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;

### are informed of the confidential nature of the Personal Data and Sanitised Personal Data and do not publish, disclose or divulge any of the Personal Data and/or Sanitised Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;

### have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Relevant Data Protection Laws); and

### retain evidence of the steps taken in respect of Clauses 23.2(f)(i) to 23.2(f)(iv) above for the Authority’s inspection;

### notify the Authority without undue delay upon becoming aware of a reasonably suspected, “near-miss” or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the GDPR. Such notification shall as a minimum:

### describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

### communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;

### describe the likely consequences of the Personal Data Breach; and

### describe the measures taken or proposed to be taken to address the Personal Data Breach.

### co‑operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, “near-miss” or actual Personal Data Breach including but not limited to;

### documenting any such Personal Data Breaches and reporting them to any supervisory authority;

### taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and

### conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;

### notify the Authority immediately if it receives:

#### from a Data Subject (or third party on their behalf):

##### a Data Subject Access Request (or purported Data Subject Access Request);

##### a request to rectify, any inaccurate Personal Data;

##### a request to have any Personal Data erased;

##### a request to restrict the Processing of any Personal Data;

##### a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any Third Party;

##### an objection to any Processing of Personal Data;

##### any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;

#### any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

#### a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

### not, without the Authority’s prior written consent, and subject also to Clause 24.1, make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Clause 23.2(h)(i)-(iii);

* + 1. taking into account the nature of the processing, provide the Authority with full assistance in relation to either Party’s obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at clause 23.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
       1. the Authority with full details and copies of the complaint, communication or request;
       2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Relevant Data Protection Laws;
       3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
       4. assistance as requested by the Authority following any Personal Data Breach;
       5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner’s Office.
    2. not, without the prior written consent of the Authority:
       1. convert any Personal Data for “big data” analysis or purposes; or
       2. match or compare any Personal Data with or against any other Personal Data (whether the Supplier’s or any third party’s);

and in each case the Supplier shall only take the steps set out in (i) to (ii) above strictly to the degree required to fulfil its obligations under this Agreement.

#### The Supplier’s obligation to notify under clause 23.2(f) and 23.2(h) shall include the provision of further information to the Authority in phases, as details become available.

#### Insofar as the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.

#### The Supplier must obtain the prior written consent of the Authority before appointing any Sub‑contractor or other Third Party to Process any Personal Data ("**Sub**‑**processor**") and the Supplier shall remain fully liable to the Authority for any failure by a Sub processor to fulfil its obligations in relation to the Processing of any Personal Data. Such consent shall be conditional upon:

#### the use of any Sub-processor being otherwise in accordance with Clause 15 and 23.7; and

#### the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

#### In accordance with Clause 23.5, the Authority consents to the use by the Supplier as at the Effective Date of the Sub‑processors listed in Part B of Schedule 2.8 (*Data Processing and List of Sub-processors*) which shall be updated as required with the written consent of the Authority.

#### The Supplier shall procure that all Sub-processors:

#### prior to commencing the Processing of any Personal Data enter into a written contract in relation to the Processing with either the Authority or the Supplier which shall include substantially the same data protection obligations on the Sub‑processor as are imposed on the Supplier by these General Terms and Conditions and which shall set out the Sub-processor’s agreed Processing activities in the same or substantially similar form as provided at Part A of Schedule 2.8 to these General Terms and Conditions; or

#### insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data outside of the European Economic Area in accordance with clause 23.8, it shall incorporate the Standard Contractual Clauses or such other mechanism as directed by the Authority to ensure the adequate protection of the transferred Personal Data;

#### act in accordance with clauses 15 and 23.

## The Supplier shall not Process or otherwise transfer any Personal Data and/or Sanitised Personal Data in or to any Off‑shore Location (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Authority of that legal requirement before Processing that Personal Data and/or Sanitised Personal Data, unless that law prohibits such information being provided). If, after the Effective Date, the Supplier or any Sub‑contractor wishes to Process and/or transfer any Personal Data and/or Sanitised Personal Data in or to any Off‑shore Location, the following provisions shall apply:

### the Supplier shall submit a Change Request to the Authority which, if the Authority agrees, at its sole discretion, to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 23.8(b) to 23.8(d);

### the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:

#### the Personal Data and/or Sanitised Personal Data which will be transferred to and/or Processed in any Off‑shore Location;

#### the Off‑shore Location or Countries which the Personal Data and/or Sanitised Personal Data will be transferred to and/or Processed in; and

#### any Sub‑contractors or other third parties who will be Processing and/or receiving Personal Data and/or Sanitised Personal Data in Off‑shore Location;

### how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Off-Shore Location(s) so as to ensure the Authority’s compliance with the Relevant Data Protection Laws;

### in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then‑current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data and/or Sanitised Personal Data to any Off‑shore Location; and

### the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

#### incorporating Relevant Data Protection Laws Standard Contractual Clauses into this Agreement or a separate data processing agreement between the Parties; and

#### complying with the provisions of Clause 23.5-23.7 in relation to any Sub‑contractor or other Third Party who will be Processing and/or receiving or accessing the Personal Data and/or Sanitised Personal Data in any Off‑shore Location either enters into:

##### a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

##### a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub‑contractor relating to the relevant Personal Data and/or Sanitised Personal Data transfer,

##### and in each case which the Supplier acknowledges may include the incorporation of Relevant Data Protection Laws Standard Contractual Clauses and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data and/or Sanitised Personal Data.

## The Supplier shall ensure that the Authority complies with any obligations under the Relevant Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority’s obligations under the Relevant Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. In connection with this obligation, the Supplier shall:

## immediately inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;

## provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:

## a systematic description of the envisaged processing operations and the purpose of the processing;

## an assessment of the necessity and proportionality of the processing operations in relation to the Services;

## an assessment of the risks to the rights and freedoms of Data Subjects; and

## the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

## implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Articles 32 to 34 of the GDPR, including by:

1. pseudonymising or encrypting Personal Data and/or Sanitised Personal Data , where appropriate;
2. ensuring the on‑going confidentiality, integrity and, availability of Processing systems and services;
3. ensuring a means to restore the availability of and access to Personal Data and/or Sanitised Personal Data in a timely manner following any physical or technical incident; and
4. having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures;

## at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.

## The Supplier shall not cause the Authority to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:

## adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR;

## designating a Data Protection Officer if required by the Relevant Data Protection Laws;

## maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:

## the Processing is not occasional;

## the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

## the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

* + 1. reporting any suspected non‑compliance or actual non‑compliance with this Clause to the Authority immediately upon becoming aware of such non‑compliance.

## The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor, and make available to the Authority or the Authority’s designated auditor all information necessary to demonstrate compliance with this Clause.

## For the avoidance of doubt, nothing in these Terms and Conditiosn relieves the Supplier of its own direct responsibilities under the GDPR.

**Data Protection Indemnity**

## The Supplier will indemnify the Authority against:

## all losses (including all direct, indirect and consequential losses) and liabilities, which shall include without limitation all amounts paid to a regulator by way of a fine, penalty, charge or payment (including a voluntary payment) and all payments made to Data Subjects including without limitation those made on a voluntary basis;

## all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement and expenses; and

## all damages and expenses

## that the Authority does or will incur or suffer (including without limitation in relation to all claims or proceedings made, brought or threatened against the Authority and/or in defending or settling any actual or threatened claims or proceeding), in each case arising out of or in connection with any breach by the Supplier or any Sub processor of any of its obligations under Clause 20 or this Clause 23 of this Agreement (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) or any act or omission by the Supplier or a Sub processor that causes the Authority to breach any obligation under the Relevant Data Protection Laws.

## **PUBLICITY AND BRANDING**

## The Supplier shall not:

### make any press announcements or publicise this Agreement or its contents in any way; or

### use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority.

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

# SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

# LIMITATIONS ON LIABILITY

*Redacted*

# INSURANCE

## The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

# SECTION H – REMEDIES AND RELIEF

# RECTIFICATION PLAN PROCESS

## Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if there is a Performance Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:

## investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;

## advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;

## minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the the Key Performance Indicators and Subsidiary Performance Indicators as soon as possible; and

## take appropriate preventative measures so that the problem does not reoccur.

## In the event that:

* + 1. there is, or is reasonably likely to be, a Delay***;***

### in any Service Period there has been a Performance Failure;

* + 1. the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default);
    2. following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a Default; and/or
    3. there is, or is reasonably likely to be, an Intervention Trigger Event,

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process. Any notice provided pursuant to this Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

**Notification**

## If:

* + 1. the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or
    2. the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),
    3. then, subject to Clauses 6.7 and 7.2, unless: the Notifiable Default also constitutes
       1. a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
       2. an Intervention Trigger Event and the Authority serves an Intervention Notice;
       3. an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
       4. a Step‑In Trigger Event and the Authority serves a Step‑In Notice,

the Supplier shall comply with the Rectification Plan Process.

## The “**Rectification Plan Process**” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

**Submission of the draft Rectification Plan**

## The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.3 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

## The draft Rectification Plan shall set out:

* + 1. full details of the Notifiable Default that has occurred, including a root cause analysis;
    2. the actual or anticipated effect of the Notifiable Default; and
    3. the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

## The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 5 of Schedule 8.4 (*Dispute Resolution Procedure*).

**Agreement of the Rectification Plan**

## The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority’s notice rejecting the first draft.

## If the Authority consents to the Rectification Plan the Supplier shall immediately start work on the actions set out in the Rectification Plan.

# DELAY PAYMENTS

## If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

## Delay Payments shall be the Authority's exclusive financial remedy for the Supplier’s failure to Achieve a Key Milestone by its Milestone Date except where:

* + 1. the Authority is entitled to or does terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*); or
    2. the Delay exceeds the Delay Deduction Period.

# ESCALATION PROCESS

## Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice (**"Escalation Notice"**) to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority (**"Escalation Meeting(s)"**).

## The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).

## The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.

## Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.

## Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

## If the Supplier is in Default of any of its obligations under Clause 29 (**"Escalation Process"**), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b) (Termination by the Authority).

# STEP-IN RIGHTS

* 1. On the occurrence of a Step‑In Trigger Event, the Authority may serve notice on the Supplier (a **“Step**‑**In Notice”**) that it will be taking action under this Clause 30 (*Step*‑*in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)).The Step‑In Notice shall set out the following:
     1. the action the Authority wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
     2. the Step‑In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
     3. the date on which it wishes to commence the Required Action;
     4. the timeperiod which it believes will be necessary for the Required Action;
     5. whether the Authority will require access to the Supplier's premises and/or the Sites; and
     6. to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier’s obligations to provide the Services during the period that the Required Action is being taken.

## Following service of a Step‑In Notice, the Authority shall:

* + 1. take the Required Action set out in the Step‑In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
    2. keep records of the Required Action taken and provide information about the Required Action to the Supplier;
    3. co‑operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
    4. act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 30.

## For so long as and to the extent that the Required Action is continuing, then:

* + 1. the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
    2. without prejudice to any Service Credits and/or Compensation for Unacceptable Performance Failure which may have accrued in respect of the period prior to the commencement of the Required Action, no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
    3. the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action provided that if the Authority's costs are greater than the Charges then, save for when the step-in action is taken by the Authority under:
       1. limbs (c) or (d) of the definition of a Step In Trigger Event; or
       2. limbs (e), (f) and (g) of the definition of a Step in Trigger Event (insofar as the primary cause of the Authority serving the Step In Notice is identified as not being the result of the Supplier’s Default)

the Supplier shall pay the difference on demand to the Authority.

## If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

* + 1. the degradation of any Services not subject to the Required Action; or
    2. the non‑Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

## Before ceasing to exercise its step in rights under this Clause 30 the Authority shall deliver a written notice to the Supplier (a “**Step**‑**Out Notice**”), specifying:

* + 1. the Required Action it has actually taken; and
    2. the date on which the Authority plans to end the Required Action (the **“Step**‑**Out Date”**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.
  1. The Supplier shall, following receipt of a Step‑Out Notice and not less than twenty (20) Working Days prior to the Step‑Out Date, develop for the Authority's approval a draft plan (a **“Step**‑**Out Plan”**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
  2. If the Authority does not approve the draft Step‑Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall within five (5) Working Days revise the draft Step‑Out Plan taking those reasons into account and shall re‑submit the revised plan to the Authority for the Authority’s approval. The Authority shall not withhold or delay its approval of the draft Step‑Out Plan unnecessarily.

## The Supplier shall bear its own costs in connection with any step‑in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step‑in action taken by the Authority under:

* + 1. limbs (c) or (d) of the definition of a Step‑In Trigger Event; or
    2. limbs (e), (f) and (g) of the definition of a Step‑in Trigger Event (insofar as the primary cause of the Authority serving the Step‑In Notice is identified as not being the result of the Supplier’s Default).

# AUTHORITY CAUSE

## Notwithstanding any other provision of this Agreement, if the Supplier

## has failed to:

* + - 1. Achieve a Milestone by its Milestone Date;
      2. provide the Operational Services in accordance with the Target Performance Levels; and/or
      3. comply with its obligations under this Agreement,

(each a “**Supplier Non**‑**Performance**”), and

* + 1. can demonstrate that the Supplier Non‑Performance would not have occurred but for an Authority Cause then, subject to Clauses 31.2 and 31.4 the Supplier shall not:
       1. be liable to accrue Service Credits in respect of that Performance Failure; or
       2. be treated as being in breach of this Agreement;

but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

## In order to claim the relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non‑Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

* + 1. the Supplier Non‑Performance;
    2. the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement;
    3. any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
    4. the relief and/or compensation claimed by the Supplier.
  1. Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non‑Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
  2. The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

* + 1. whether a Supplier Non‑Performance would not have occurred but for an Authority Cause; and/or
    2. the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non‑Performance.

* 1. Save as expressly set out in this Agreement, the Supplier shall not be entitled to any relief or compensation for a Supplier Non‑Performance which relates to Performance Indicators designated as shared in Schedule 2.2 (*Performance Levels*).

# FORCE MAJEURE

* 1. Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Capability*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub‑contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub‑contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
  2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

## If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

* + 1. are capable of being mitigated by any of the Services including the BCDC Services, but the Supplier has failed to do so; and/or
    2. should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
  1. Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
  2. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## Where, as a result of a Force Majeure Event:

### an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

* + - 1. the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(c) (*Termination by the Authority*) or Clause 33.6(b) (*Termination by the Supplier)*; and
      2. neither Party shall be liable for any Default arising as a result of such failure;

### the Supplier fails to perform its obligations in accordance with this Agreement:

* + - 1. the Authority shall not be entitled:
         1. during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step*‑*in Rights*) as a result of such failure;
         2. to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
         3. to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable Performance Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

1. the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
   1. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
   2. Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

# SECTION I – TERMINATION AND EXIT MANAGEMENT

# TERMINATION RIGHTS

**Termination by the Authority**

## The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:

### for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

### if a Supplier Termination Event occurs;

### if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

### if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

### and this Agreement shall terminate on the date specified in the Termination Notice.

## Where the Authority:

### is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (c) and/or (j) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

### has the right to terminate this Agreement under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

**Termination for Persistent Breach**

## If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice (**"Termination Warning Notice"**) on the Supplier:

### specifying that it is a formal Termination Warning Notice;

### giving reasonable details of the Default; and

### stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.

## If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier (**"Final Termination Warning Notice"**):

### specifying that it is a Final Termination Warning Notice;

### stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and

### stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).

## Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

**Termination by the Supplier**

## The Supplier may, by issuing a Termination Notice to the Authority, terminate:

### this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £1,000 and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non‑payment from the Supplier; or

### any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

### and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.6(b) would result in a Partial Termination, the provisions of Clause 33.7 (*Partial Termination*) shall apply.

**Partial Termination**

## If the Supplier notifies the Authority pursuant to Clause 33.6(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier’s Termination Notice. For the purpose of this Clause 33.7, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

## The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

### the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

### any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

### the Supplier shall not be entitled to reject the Change.

# CONSEQUENCES OF EXPIRY OR TERMINATION

**General Provisions on Expiry or Termination**

## The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.9 and 10.17 (*Promoting Tax Compliance*), 10.5 and 10.6 (*Set*‑*off and Withholding*) , 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Right*s), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 19.A.4 (IPR Indemnity for Open Source Software), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and* *Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

**Exit Management**

## The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

**Payments by the Authority**

## If this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).

## If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

### payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and

### payments in respect of unpaid Charges for Services received up until the Termination Date.

## The costs of termination incurred by the Parties shall lie where they fall if:

## either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.6(b) (*Termination by the Supplier*); or

## the Authority terminates this Agreement under Clause 33.1(d).

## **Payments by the Supplier**

## In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

## If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 33.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a **“Milestone Adjustment Payment Notice”**) require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates less a reasonable amount to reflect the Deliverables relating to the relevant CCP Milestones that the Authority wishes to retain (taking into account the Supplier’s costs of providing that Deliverable and the benefit derived by the Authority) (“**Milestone Adjustment Payment Amount**”).

## The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

### notify the Authority whether it agrees with the Milestone Adjustment Payment Amount; or

### provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone that is the subject of the relevant Milestone Adjustment Payment Notice, including details of all relevant Milestone Payments; and

### provide the Authority with such supporting information as the Authority may require.

## If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier’s receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

# SECTION J - MISCELLANEOUS AND GOVERNING LAW

# COMPLIANCE

**Health and Safety**

## The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

### all applicable Law regarding health and safety; and

### the Health and Safety Policy whilst at the Authority Premises.

## Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

**Equality and Diversity**

## The Supplier shall:

### perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

#### all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

#### the Authority’s equality and diversity policy as provided to the Supplier from time to time; and

#### any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;and

### take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

**Official Secrets Act**

## The Supplier shall comply with the provisions of the Official Secrets Acts 1911 to 1989.

**Modern Slavery Act**

35.5 In performing its obligations under the Agreement, the Supplier shall;

* + 1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;

### not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and

### notify the Authority as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 35.5(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:

### remedy the breach; and

### ensure future compliance with Clause 35.5(a) and (b).

35.6 35.6 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 35.5 then this shall constitute a Supplier Termination Event.

# ASSIGNMENT AND NOVATION

## The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

## The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

### any Central Government Body; or

### to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

## and the Supplier shall, at the Authority’s request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 36.2.

## A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

## If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a **“Successor Body”**), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

# WAIVER AND CUMULATIVE REMEDIES

## 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.

## 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.

# RELATIONSHIP OF THE PARTIES

## Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

# PREVENTION OF FRAUD AND BRIBERY

## The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

### committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Supplier shall not during the term of this Agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Authority or any of the Authority’s employees, consultants, contractors, sub‑contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

## The Supplier shall during the term of this Agreement:

### establish, maintain and enforce, and require that its Sub‑contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request.

## The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

## If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co‑operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).

## If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:

### require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

### immediately terminate this Agreement.

## Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

# SEVERANCE

## If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

## In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

## If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

# FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

# ENTIRE AGREEMENT

## This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

## Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

## Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

# THIRD PARTY RIGHTS

## The provisions of Clause 19 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 8.12 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party** **Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

## Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**Service Recipients and Service Beneficiaries**

## Subject to Clause 43.1 and Clauses 43.5 to 43.10 a person who is not a Party to this Agreement has no right under the CRTPA 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.

## The Supplier shall provide the Services to the Service Recipients and/or Service Beneficiaries listed in Schedule 2.7 (*Service Recipients and Service Beneficiaries*) in accordance with, and subject to, the terms of this Agreement. In addition, the Supplier shall provide the Services to such other Service Recipients and Service Beneficiaries (in addition to those listed in Schedule 2.7 (Service Recipients) as at the Effective Date) as the Authority may designate during the Term (and such third parties shall become "Service Recipients" or "Service Beneficiaries" (as appropriate) for the purposes of this Agreement).

## The provision of any of the Services for the benefit of a Service Recipient and/or a Service Beneficiary shall be without prejudice to the terms and conditions of any existing agreement which may have been entered into by the Supplier and such Service Beneficiary and/or Service Recipient (as appropriate).

## Nothing in this Agreement shall create or be deemed to create a supplier ‑ customer relationship between the Supplier and any Service Beneficiary and/ or Service Recipient at a contractual or management level but, without prejudice to that position, in providing services and dealing with service‑related issues, at the level of the end user, the Supplier will deal directly with the end users or their relevant representatives in the Service Recipient and/ or Service Beneficiary.

## If there is a Default by the Supplier, any liability of the Supplier as a result of such Default shall be dealt with as between the Supplier and the Authority under the terms of this Agreement[, provided that:

## if any Service Recipient and/or Service Beneficiary suffers or incurs any losses and/or damages as a direct result of any such Default or is entitled to make a claim under Clause 19 *(IPRs Indemnities*), such losses and/or damages shall be recoverable from the Supplier, and such claim shall be made against the Supplier, under this Agreement by the Authority (and not by the Service Recipient) and shall be subject to Clause 25 (*Limitations on Liability*); and

## the Authority shall procure the agreement of the Service Recipient and/or Service Beneficiary to the provisions of this Clause 43 prior to the commencement of provision of any services to that Service Recipient and/ or Service Beneficiary].

## Where compliance with any obligation or responsibility of the Authority is necessary in order to enable the Supplier to supply the benefit of a Service to a Service Recipient and/or Service Beneficiary, responsibility for compliance shall remain with the Authority but compliance by the Service Recipient and/or Service Beneficiary shall be deemed to be compliance by the Authority.

## Other terms and conditions applicable to the provision of Services to any Service Recipient and/or Service Beneficiary are as follows:

## the maximum period for which the Service Recipient and/or Service Beneficiary may enjoy the benefit of the Services shall be the duration of this Agreement;

## to the extent that the Service Recipient and/or Service Beneficiary receives the benefit of the Services, the term "Authority Data" shall be deemed to extend to any data of the Service Recipient and/or Service Beneficiary;

## for the purposes of this Agreement, the Services received by the Service Recipient and/or Service Beneficiary shall be treated as though provided to the Authority and references to the Authority in Clause 17 (Licences Granted by the Supplier) shall be deemed to include references to the Service Recipient and/or Service Beneficiary;

## a right, indemnity or any limitation or exclusion of liability in favour of the Authority, is intended by the Parties to be a right or benefit of such Service Recipients and/or Service Beneficiary, as if such Service Recipients and/or Service Beneficiary had been parties to this Agreement;

## the Authority shall ensure that any relevant Service Recipients and/or Service Beneficiary shall comply with the Dispute Resolution Procedure in respect of any Disputes regarding the Services which involve such Service Recipients and/or Service Beneficiary. In respect of any such Disputes, the Authority shall participate in and manage the Dispute Resolution Procedure on the applicable Services Recipient’s and/or Service Beneficiary's behalf and the Supplier agrees that such Disputes may be so managed by the Authority;

## the Parties agree that no consent from any Service Recipient and/or Service Beneficiary is required for the Parties to vary or terminate this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Service Recipients and/or Service Beneficiary); and

## during the Term, the Authority shall be entitled to remove any Service Recipient and/or Service Beneficiary from the scope of this Agreement in accordance with Clauses 43.11 and 43.12 below.

**Addition and/or removal of Service Recipients and/or Service Beneficiaries**

## From time to time, the Authority may decide that it requires a new Service Recipient and/or Service Beneficiary to receive the Services or part of the Services or that a Service Recipient and/or Service Beneficiary will no longer receive the Services or part of the Services. In such circumstances:

## the Authority shall provide written notice to the Supplier to add or remove that Service Recipient and/or Service Beneficiary (as appropriate) from the scope of this Agreement as of the date specified by the Authority;

## the Authority shall, if necessary, adjust the Charges on an equitable basis to reflect the increased/reduced scope and/or volume of the Services;

## the Authority may request that the Supplier provide Termination Assistance (including continuing the benefit of any licences granted to the said Services Recipient and/or Service Beneficiary under this Agreement) in relation to the removed Services Recipient and/or Service Beneficiary; and

## if a Service Recipient and/or Service Beneficiary is removed from the scope of this Agreement pursuant to this Clause 43.11 as a result of any UK Government reorganisation, the Supplier shall, if requested by the Authority, provide Services to any new UK Government entity designated by the Authority under the terms of this Agreement for a reasonable period designated by the Authority, which may include Termination Assistance.

## The Authority may partially add or remove a Service Recipient and/or Service Beneficiary from the scope of this Agreement based upon the principles of Clause 43.11 and, upon so doing, the Supplier shall comply with the other provisions of Clause 43.11.

## **NOTICES**

*Redacted*

# NON-SOLICITATION

45.1 Except in respect of implementing any Relevant Transfer, the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the Authority any person employed by the case of the Authority in the receipt and/or administration of the Services.

# DISPUTES

## The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

## The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.



# GOVERNING LAW AND JURISDICTION

## Each Party irrevocably agree that 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 exclusively governed by and construed in accordance with the laws of England and Wales.

## Subject to Clause 4546 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority’s right to refer the dispute to arbitration), the Parties irrevocably 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.

**IN WITNESS** of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

|  |  |
| --- | --- |
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| --- |
| **SIGNED** for and on behalf of Exela Technologies Ltd  Signature:  Name:  Position:  Date: |
| **SIGNED** for and on behalf of ***The Commissioners for Her Majesty's Revenue and Customs***  Signature:  Name:  Position:  Date: |

**SCHEDULE****1**

**Definitions**

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

|  |  |  |
| --- | --- | --- |
| **“Achieve”** | 1. in respect of a Test, to successfully pass a Test without any Test Issues; and 2. in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Test and Assurance*),   and **“Achieved”** and **“Achievement”** shall be construed accordingly; | |
| **“Acquired Rights Directive”** | the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re‑enacted from time to time; | |
| **“Affected Party”** | the Party seeking to claim relief in respect of a Force Majeure Event; | |
| **“Affiliate”** | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; | |
| **"Agreement"** | means the clauses of this agreement together with the Schedules and annexes to it; | |
| **“Annual Contract Report”** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*); | |
| **“Anticipated Contract Life Profit Margin”** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); | |
| **“Assets”** | all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets; | |
| **“ATP Milestone”** | the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan or a Project Plan; | |
| **“Audit”** | any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights)*; | |
| **“Audit Agents”** | 1. the Authority’s internal and external auditors; 2. the Authority’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by the Authority to carry out audit or similar review functions; and 6. successors or assigns of any of the above; | |
| **“Audit Rights”** | the audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*); | |
| **“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”** | 1. IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know‑How, documentation, processes and procedures; 2. IPRs created by the Authority independently of this Agreement; and/or 3. Crown Copyright which is not available to the Supplier otherwise than under this Agreement;   but excluding IPRs owned by the Authority subsisting in the Authority Software; | |
| **“Authority Cause”** | any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:   1. the result of any act or omission by the Authority to which the Supplier has given its prior consent; or 2. caused by the Supplier, any Sub‑contractor or any Supplier Personnel; | |
| **“Authority Data”** | 1. 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: 2. supplied to the Supplier by or on behalf of the Authority; and/or 3. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; 4. any Personal Data; or 5. any Sanitised Personal Data; | |
| **“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”** | the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:   1. are owned or used by or on behalf of the Authority; and 2. are or may be used in connection with the provision or receipt of the Services,   but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software; | |
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| **“Authority Premises”** | premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub‑contractors for provision of the Services (or any of them); | |
| **“Authority Representative”** | the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*); | |
| **“Authority Requirements”** | the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Indicators),* 2.3 (*Standards),* 2.4 (*Security Management), 2.5 (Insurance Requirements),* 6.1 Implementation, 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Capability)*; | |
| **“Authority Responsibilities”** | the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*); | |
| **“Authority Software”** | software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services; | |
| **“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 Agreement 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; | |
| **“Baseline Security Requirements”** | the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier; |
| **“BCDC Plan”** | any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (*Business Continuity and Disaster Capability)*, as may be amended from time to time; | |
| **“BCDC Services”** | the business continuity and disaster recovery services set out in Schedule 8.6 (*Business Continuity and Disaster Capability)*; | |
| **“Breakage Costs Payment”** | has the meaning given in Schedule 7.2 (*Payments on Termination*); | |
| **“Central Government Body”** | 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:   1. Government Department; 2. Non‑Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non‑Ministerial Department; or 4. Executive Agency; | |
| **“Certificate of Costs”** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); | |
| **“Change”** | any change to this Agreement; | |
| **“Change Authorisation Note”** | a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (*Change Control Procedure*); | |
| **“Change Control Procedure”** | the procedure for changing this Agreement set out in Schedule 8.3 (*Change Control Procedure*); | |
| **“Change in Law”** | any change in Law which impacts on the performance of the Services which comes into force after the Effective Date; | |
| **“Change Request”** | a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (*Change Control Procedure);* | |
| **“Charges”** | the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (*Charges and Invoicing)*, including any Milestone Payment or Service Charge; | |
| **“Commercially Sensitive Information”** | the information listed in Schedule 4.2 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to;   1. the pricing of the Services; 2. the details of the Supplier's IPRs; and 3. the Supplier's business and investment plans;   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; | |
| **“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 Performance Failure”** | has the meaning given in Clause 7.4(a) (*Unacceptable Performance Failure*); | |
| **"Concealed IPR"** | means IPR of the Suppler (or licensed to the Supplier) which is or will be used before or during the Term for designing, testing implementing or providing the Services which IPR is not set out in Schedule 5 (*IPR*); | |
| **“Confidential Information”** | 1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:   the Disclosing Party Group; or  the operations, business, affairs, developments, intellectual property rights, trade secrets, know‑how and/or personnel of the Disclosing Party Group;   1. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement 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 Agreement; 2. 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 Agreement and all matters arising therefrom; and 3. Information derived from any of the above,   but not including any Information which:  was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;  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;  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;  was independently developed without access to the Confidential Information; or  relates to the Supplier’s:  performance under this Agreement; or  failure to pay any Sub‑contractor as required pursuant to Clause 15(11) (*Supply Chain Protection*); | |
| **“Connected Company”** | means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person; | |
| **“Contract Change”** | any change to this Agreement 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; | |
| **“Contract Year”** | 1. a period of twelve (12) months commencing on the Effective Date; or 2. thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;   provided that the final Contract Year shall end on the expiry or termination of the Term; | |
| **“Control”** | the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls”** and “**Controlled”** shall be interpreted accordingly; | |
| **“Controller”** | has the meaning given in the Relevant Data Protection Laws; | |
| **“Costs”** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); | |
| “**Counter Notice**” | has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“CPP Milestone”** | a contract performance point as set out in the Implementation Plan or a Project Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (*Test and Assurance*); | |
| **"Critical Failure Performance Threshold"** | means the relevant level of performance designated as such for a Performance Indicator and set out in the relevant table in Part I of Annex 1 of Schedule 2.2 (*Performance Levels*); | |
| **“Critical KPI Failure”** | shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*); | |
| **“Critical SPI Failure”** | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (Performance Levels) | |
| **“CRTPA”** | the Contracts (Rights of Third Parties) Act 1999; | |
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| **“Data Protection Impact Assessment”** | means an assessment by the Controller of the impact of the processing on the protection of Personal Data; | |
| **“Data Protection Officer”** | has the meaning given in the Relevant Data Protection Laws; | |
| **“Data Subject”** | has the meaning given in the Relevant Data Protection Laws; | |
| **“Data Subject Access Request”** | a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data; | |
| **“Deductions”** | all Service Credits, Compensation for Unacceptable Performance Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement; | |
| **“Default”** | any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:   1. in the case of the Authority, of its employees, servants, agents; or 2. in the case of the Supplier, of its Sub‑contractors or any Supplier Personnel,   in connection with or in relation to the subject‑matter of this Agreement and in respect of which such Party is liable to the other; | |
| **“Defect”** | 1. any error, damage or defect in the manufacturing of a Deliverable; or 2. any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or 3. 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 4. 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; | |
| **“Delay”** | 1. a delay in the Achievement of a Milestone by its Milestone Date; or 2. a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan or a Project Plan; | |
| **“Delay Deduction Period”** | the period of one hundred (100) days commencing on the relevant Milestone Date; | |
| **“Delay Payments”** | the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7.1 (*Charges and Invoicing*); | |
| **“Deliverable”** | an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement; | |
| **"Detailed Implementation Plan"** | means the plan prepared in accordance with paragraph Paragraphs 3 and 4 of Schedule 6.1 (*Implementation*); | |
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| **“Disclosing Party”** | has the meaning given in Clause 21.1 (*Confidentiality*); | |
| **“Disclosing Party Group”** | 1. where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and 2. where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement; | |
| **“Dispute”** | any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; | |
| **“Dispute Notice”** | a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; | |
| **“Dispute Resolution Procedure”** | the dispute resolution procedure set out in Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“Documentation”** | 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:   1. is required to be supplied by the Supplier to the Authority under this Agreement; 2. 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; 3. is required by the Supplier in order to provide the Services; and/or 4. 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 or those who use them to tell HMRC of any 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 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005; | |
| **“Due Diligence Information”** | any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date; | |
| **“Effective Date”** | the date on which this Agreement is signed by both Parties | |
| **“EIRs”** | the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; | |
| **“Emergency Maintenance”** | ad hoc and unplanned maintenance provided by the Supplier where:   1. the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or 2. the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault; | |
| **“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:   1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; 2. unfair, wrongful or constructive dismissal compensation; 3. 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; 4. compensation for less favourable treatment of part‑time workers or fixed term employees; 5. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; 6. employment claims whether in tort, contract or statute or otherwise; 7. 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 or any other Regulations implementing the Acquired Rights Directive; | |
| **"Escalation Meeting"** | shall have the meaning at Clause 29.1 | |
| **"Escalation Notice"** | shall have the meaning at Clause 29.1 | |
| **"Escalation Process Failure"** | shall have the meaning at Clause 29.6; | |
| **"Escalation Process Trigger Event"** | shall mean:   1. an Intervention Trigger Event; and/ or 2. Rectification Plan Failure; | |
| **“Estimated Year 1 Charges”** | the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model; | |
| **“Euro Compliant”** | means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority’s business; (ii) all currency‑reliant and currency‑related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency‑related functions (including all calculations concerning financial data):   1. be able to perform all such functions in any number of currencies and/or in euros; 2. during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; 3. recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; 4. incorporate protocols for dealing with rounding and currency conversion; 5. recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and 6. permit the input of data in euro and display an outcome in euro where such data, supporting the Authority’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK; | |
| **“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 8.5 (*Exit Management*); | |
| **“Exit Plan”** | the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (*Exit Management*); | |
| **“Expedited Dispute Timetable”** | the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“Expert”** | has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“Expert Determination”** | the process described in Paragraph 5 of Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“Extension Period”** | has the meaning given in Clause 4.2; | |
| **“Final Termination Warning Notice”** | has the meaning given to it in Clause 33.4; | |
| **“Financial Distress Event”** | means the occurrence of one or more of the following events:   * + 1. If there is any downgrade credit rating issued by any Rating Agency for either the Supplier, the Guarantor or any Key Sub-contractor;     2. the Supplier, the Guarantor or any Key Sub-contractor 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. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;  1. the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders; 2. 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; or 3. any of the following:    * + 1. commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than five million pounds Sterling £5,000,000 or obligations under a service contract with a total contract value greater than five million pounds Sterling £5,000,000;   non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;  any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or  the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,  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 Agreement; | |
| **“Financial Distress Service Continuity Plan”** | a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs; | |
| **“Financial Model”** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; | |
| **“Financial Reports”** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; | |
| **“Financial Transparency Objectives”** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; | |
| **“FOIA”** | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act; | |
| **“Force Majeure Event”** | any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non‑happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or 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 9.1 (*Staff Transfer*); | |
| **"GDPR"** | means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC and the Data Protection Act 1998), along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time; | |
| **“General Anti**‑**Abuse Rule”** | means   1. the legislation in Part 5 of the Finance Act 2013; 2. the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and 3. any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax; | |
| **“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; | |
| **“Goods”** | has the meaning given in Clause 9.8 (*Supply of Goods*); | |
| **“Government Controlled Company”** | means RCDTS or any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law and controlled by the Customer. | |
| **“Guarantee”** | the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (*Guarantee*)), or any guarantee acceptable to the Authority that replaces it from time to time; | |
| **“Guarantor”** | *redacted* | |
| **“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 Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety; | |
| **“HMRC”** | HM Revenue & Customs; | |
| **“Impact Assessment”** | has the meaning given in Schedule 8.3 (*Change Control Procedure);* | |
| **"Implementation"** | has the meaning given in Schedule 6.1 *(Implementation);* | |
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| **"Implementation Plan"** | the Outline Implementation Plan and the Detailed Implementation Plan as described in Schedule 6.1 (*Implementation*); | |
| “Implementation Services” | Shall mean, in relation to each service, the service to be provided during Implementation; | |
| **"Incumbent Supplier"** | means the supplier to the Authority of services similar to the Services prior to the Services Commencement Date; | |
| **“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 Agreement; | |
| **“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 three (3) years from and including the first Operational Service Date; | |

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| **“Insolvency Event”** | | 1. the other Party 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:    * + 1. *(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*        2. *(being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;* 2. the other Party 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 other Party with one or more other companies or the solvent reconstruction of that other Party; 3. a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party; 4. a creditor or encumbrancer of the other Party 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 the other Party's assets and such attachment or process is not discharged within fourteen (14) days; 5. the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; 6. where the other Party is a company, a LLP or a partnership:    * + 1. *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 other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;*        2. *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 the other Party;*        3. *(being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or*        4. *(being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or* 7. any event occurs, or proceeding is taken, with respect to the other Party 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”** | | 1. 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; 2. 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 3. all other rights having equivalent or similar effect in any country or jurisdiction; | |
| **“Intervention Trigger Event”** | | 1. any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; 2. any event falling within limb (b) or (e) of the definition of Step‑In Trigger Event; 3. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 4. the Supplier committing a Major KPI Failure or a Critical KPI Failure; and/or 5. the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; | |
| **“IPRs Claim”** | | any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the 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 Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement; | |
| **“IT”** | | information and communications technology; | |
| **“IT Environment”** | | the Authority System and the Supplier System; | |
| **“Key Milestone”** | | the Milestones identified in the Implementation Plan or any Project Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone; | |
| **“Key Performance Indicator” or "KPI"** | | the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*); | |
| **“Key Personnel”** | | those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) 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 (*Key Personnel*); | |
| **“Key Roles”** | | a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*); | |
| **“Key Sub**‑**contract”** | | each Sub‑contract with a Key Sub‑contractor; | |
| **“Key Sub-contractor”** | | any Sub‑contractor:   1. 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 2. with a Sub‑contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model); | |
| **“Know**‑**How”** | | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement; | |
| **“KPI Failure”** | | a failure to meet the Target Performance Level in respect of a Key Performance Indicator; | |
| **“Law”** | | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye‑law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply; | |
| **“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 Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software; | |
| **“Losses”** | | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise; | |
| **“Maintenance Schedule”** | | shall have the meaning set out in Clause 9.5 (*Maintenance*); | |
| **"Major Failure Performance Threshold"** | | means the relevant level of performance designated as such for a Performance Indicator and set out in the relevant table in Part I of Annex 1 of Schedule 2.2 (Performance Levels); | |
| **“Major KPI Failure”** | | shall have the meaning given, in relation to the relevant Key Performance Indicator, in paragraph 1.7(b) of Part A of Schedule 2.2 (*Performance Levels*); | |
| **“Major SPI Failure”** | | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in paragraph 1.7(b) of Part A of Schedule 2.2 (Performance Levels); | |
| **“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; | |
| **“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 twelve (12) month period if measured annually), as is specified for each Key Performance Indicator and Subsidiary Performance Indicator in the relevant table set out at Annex 1 to Schedule 2.2 (*Performance Levels*); | |
| **“Milestone”** | | an event or task described in the Implementation Plan or a Project 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 6.2 (*Test and Assurance*); | |
| **“Milestone Adjustment Payment Amount”** | | has the meaning given in Clause 34.7 (*Payments by the* Supplier); | |
| **“Milestone Adjustment Payment Notice”** | | has the meaning given in Clause 34.7 (*Payments by the Supplier*); | |
| **“Milestone Date”** | | the target date set out against the relevant Milestone in the Implementation Plan or a Project Plan by which the Milestone must be Achieved; | |
| **“Milestone Payment”** | | a payment identified in Schedule 7.1 (*Charges and Invoicing*) to be made following the issue of a Milestone Achievement Certificate; | |
| **“Milestone Retention”** | | has the meaning given in Schedule 7.1 (*Charges and Invoicing);* | |
| **“Minor KPI Failure”** | | shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7(a) of Part A of Schedule 2.2 (*Performance Levels*); | |
| **“Minor SPI Failure”** | | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in Paragraph 1.7(a) of Part A of Schedule 2.2 (*Performance Levels*); | |
| **“Month”** | | a calendar month and **“monthly”** shall be interpreted accordingly; | |
| **“New Releases”** | | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; | |
| **"Non-Party IPRs"** | | any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs; | |
| **“Non-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 27.2 (*Rectification Plan Process*); | |
| **“Object Code”** | | software and/or data in machine‑readable, compiled object code form; | |
| **“Occasion of Tax Non-Compliance”** | | * + 1. any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:        1. a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;        2. the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or  1. the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years; 2. For these purposes :    * + 1. a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and        2. a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible. | |
| **“Off-shore Location”** | | any place outside of the United Kingdom; | |
| **“Open Book Data”** | | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*) | |
| **“Open Source”** | | 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; | |
| **"Open Source Publication Material"** | | has the meaning given in Clause 19A.2(f); | |
| **“Operating Environment”** | | the Authority System and the Sites; | |
| **“Operational Change”** | | any change in the Supplier's operational procedures which in all respects, when implemented:   1. will not affect the Charges and will not result in any other costs to the Authority; 2. 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; 3. will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and 4. will not require a change to this Agreement; | |
| **“Operational Service Date”** | | in relation to an Operational Service, the later of:   1. the date identified in the Implementation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and 2. where the Implementation Plan or a Project 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; | |
| **“Optional Services”** | | the services described as such in Schedule 2.1 (*Services Description*) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (*Optional* *Services*); | |
| **“Other Supplier”** | | any other third party which supplies services to the Authority but excluding the Incumbent Suppliers; | |
| **“Partial Termination”** | | the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) (*Termination by the Authority*) or 33.6(b) (*Termination by the Supplier*); | |
| **“Parties”** and **“Party”** | | have the meanings respectively given on page 1 of this Agreement; | |
| **“Performance Failure”** | | a KPI Failure or an SPI Failure; | |
| **“Performance Indicators”** | | the Key Performance Indicators and the Subsidiary Performance Indicators; | |
| **“Performance Monitoring Report”** | | has the meaning given in Schedule 2.2 (*Performance Levels*); | |
| **“Permitted Maintenance”** | | has the meaning given in Clause 9.5 (*Maintenance*); | |
| **“Persistent Breach”** | | means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice; | |
| **“Personal Data”** | | personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub‑contractor pursuant to or in connection with this Agreement; | |
| **“Personal Data Breach”** | | means:  (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;  (b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or  (c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Personal Data; | |
| **“Preceding Services”** | | has the meaning given in Clause 5.2(b) (*Standard of Services)*; | |
| **“Process”** | | has the meaning given to it under the Relevant Data Protection Laws and “**Processed**” and “**Processing**” shall be construed accordingly; | |
| **“Processor”** | | has the meaning given in the Relevant Data Protection Laws; | |
| **“Prohibited Act”** | | 1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:   induce that person to perform improperly a relevant function or activity; or  reward that person for improper performance of a relevant function or activity;   1. 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 Agreement; 2. an offence:   under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);  under legislation or common law concerning fraudulent acts; or  defrauding, attempting to defraud or conspiring to defraud the Authority; or   1. 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; | |
| **“Prohibited Transaction”** | | has the meaning given in Clause 10.18 (*Use of Off-shore Tax Structures*); | |
| **"Project"** | | any programme of work which has been agreed by the Authority and the Supplier in accordance with the procedures set out in Schedule 6.3 (*Projects and Ordering*) (or equivalent). Such programme of work may involve the participation of an Other Supplier and require project management and project office activity; | |
| **"Project Plan"** | | the agreed project plan for a Project set out in, attached to or included by reference in the relevant Project Work Order; | |
| **“Project Specific IPRs”** | | *Redacted* | |
| **"Project Work Order"** | | has the meaning given in Schedule 6.3 (*Projects and Ordering*); | |
| **“Quality Plans”** | | has the meaning given in Clause 6.1 (*Quality Plans*); | |
| **“Quarter”** | | the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement); | |
| **“RCDTS”** | | means Revenue and Customs Digital Technology Services Limited | |
| **“Rectification Plan”** | | a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default; | |
| **“Rectification Plan Failure”** | | 1. the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*); 2. the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (*Agreement of the Rectification Plan*); 3. the Supplier failing to rectify a material Default within the later of:    * + 1. thirty (30) Working Days of a notification made pursuant to Clause 27.3 (*Notification);* and        2. 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; 4. where a Rectification Plan has been implemented a Performance Failure re-occurring in respect of the same Key Performance Indicator and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete); 5. the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or 6. following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (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 27.5 (*Submission of the draft Rectification Plan*) to Clause 27.9  (*Agreement of the Rectification Plan*); | |
| **“Registers”** | | has the meaning given in Schedule 8.5 (*Exit Management*); | |
| **“Reimbursable Expenses”** | | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); | |
| **“Related Third Party Dispute Initiation Notice”** | | has the meaning given in Paragraph 8.2 of Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **“Related Third Party Dispute Resolution Procedure”** | | has the meaning given in Paragraph 8.1 of Schedule 8.4 (*Dispute Resolution Procedure*); | |
| **"Relevant Data Protection Laws"** | | Means: (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (iii) any other applicable Laws relating to the processing of personal data and privacy; and (iv) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws; | |
| **“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 Agreement 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(b) (*Standard of Services*); | |
| **“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, resident or liable to any Tax; | |
| **“Relevant Transfer”** | | | a transfer of employment to which the Employment Regulations applies; | |
| **“Relief Notice”** | | | has the meaning given in Clause 31.2 (*Authority Cause*; | |
| **“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 Agreement, 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 30.1(a) (*Step*‑*In Rights*); | |
| **“Risk Register”** | | | the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (*Charges and Invoicing*); | |
| **“Sanitised Personal Data”** | | | data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified; | |
| **“Security Management Plan”** | | | the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (*Security Management*) and as subsequently developed and revised pursuant to Paragraphs 4 and 5 of Schedule 2.4 (*Security Management*); | |
| **"Service Beneficiary"** | | | means an entity, other than the Authority, that may receive the benefit of some aspect of the Services and whom the Authority shall notify to the Supplier from time to time (an indicative and non-exhaustive list of Services Beneficiaries is set out in Schedule 2.7 (Services Recipients and Services Beneficiaries); |
| **“Service Charges”** | | | the periodic payments made in accordance with Schedule 7.1 (*Charges and Invoicing*) in respect of the supply of the Operational Services; |
| **“Service Credit Cap”** | | | has the meaning given in paragraph 6.3 of Part A (*Performance Indicators and Service Credits*) of Schedule 2.2 (*Performance Levels*). |
| **“Service Credits”** | | | credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Paragraphs 3, 4 and 5 of Part C of Schedule 7.1 (*Charges and Invoicing*); |
| **“Service Period”** | | | a calendar month, save that:   1. the first service period shall begin on the first Operational Service Date and shall expire at the end of the calendar month in which the first Operational Service Date falls; and 2. the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term; |
| **“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 2.2 (Performance *Levels*); |
| **“Service Recipient”** | | | means those listed as such in Schedule 2.7 (Service Recipients) (as such Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services; |
| **“Services”** | | | any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (*Services Description*); |
| **“Services Description”** | | | the services description set out in Schedule 2.1 (*Services Description*); |
| **“Service Transfer Date”** | | | has the meaning given in Schedule 9.1 (*Staff Transfer*); |
| **“Sites”** | | | any premises (including the Authority Premises, the Supplier’s premises or third party premises):   1. from, to or at which:    * + 1. *the Services are (or are to be) provided; or*        2. *the Supplier manages, organises or otherwise directs the provision or the use of the Services; or* 2. where:    * + 1. *any part of the Supplier System is situated; or*        2. *any physical interface with the Authority System takes place;* |
| **“Software”** | | | Specially Written Software, Supplier Software and Third Party Software; |
| **“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”** | | | *Redacted* |
| **“SPI Failure”** | | | a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator; |
| **“Staffing Information”** | | | has the meaning given in Schedule 9.1 (*Staff Transfer*); |
| **"Standard Contractual Clauses"** | | | means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the GDPR) which subsequently amends, replaces or supersedes these; |
| **“Standards”** | | | the standards, polices and/or procedures identified in Schedule 2.3 (*Standards*) and as updated from time to time by the Authority and notified to the Supplier; |
| **“Step-In Notice”** | | | has the meaning given in Clause 30.1 *(Step*‑*In Rights)*; |
| **“Step-In Trigger Event”** | | | 1. any event falling within the definition of a Supplier Termination Event; 2. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 3. the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; 4. the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 30 (Step‑In Rights) is necessary; 5. the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or 6. a need by the Authority to take action to discharge a statutory duty; |
| **“Step-Out Date”** | | | has the meaning given in Clause 30.5(b) (*Step*‑*In Rights*); |
| **“Step-Out Notice”** | | | has the meaning given in Clause 30.5 (*Step*‑*In Rights*); |
| **“Step-Out Plan”** | | | has the meaning given in Clause 30.6 (*Step*‑*In Rights*); |
| **“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”** | | | any third party with whom:   1. the Supplier enters into a Sub‑contract; or 2. a third party under (a) above enters into a Sub‑contract,   or the servants or agents of that third party; |
| **“Subsidiary Performance Indicator” or "SPI"** | | | the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*); | |
| **“Successor Body”** | | | has the meaning given in Clause 36.4 (*Assignment and Novation*); | |
| **“Supplier Background IPRs”** | | | 1. 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 2. Intellectual Property Rights created by the Supplier independently of this Agreement,   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; |
| **“Supplier COTS Background IPRs”** | | | Supplier Background IPRs that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non‑trivial Customer Base; |
| **“Supplier COTS Software”** | | | Supplier Software (including open source software) that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non‑trivial Customer Base; |
| **“Supplier Equipment”** | | | the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub‑contractors (but not hired, leased or loaned from the Authority) for the provision of the Services; |
| **"Supplier Executive"** | | | means ***UK and Ireland General Manager*** |
| **“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 31 (*Authority Cause*); |
| **“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 Agreement; |
| **“Supplier Profit”** | | | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **“Supplier Profit Margin”** | | | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **“Supplier Representative”** | | | the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives);* |
| **“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 as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.9**;** |
| **“Supplier Solution”** | | | the Supplier's solution for the Services set out in Schedule 4.1 (*Supplier Solution*) including any Annexes of that Schedule; |
| **“Supplier System”** | | | the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System); |
| **“Supplier Termination Event”** | | | 1. the Supplier’s level of performance constituting an Unacceptable Performance Failure or a Critical KPI Failure; 2. the Supplier's level of performance constitutes a Persistent Breach; 3. the Supplier committing a material Default which is irremediable; 4. as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.2(a) (Financial Limits); 5. a Rectification Plan Failure; 6. an Escalation Process Failure; 7. where a right of termination is expressly reserved in this Agreement, including pursuant to:    * + 1. 19 (IPRs Indemnity);        2. Clause 39.6(b) (Prevention of Fraud and Bribery); and/or        3. Paragraph 4 of Schedule 7.4 (Financial Distress); 8. the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (Warranties) being materially untrue or misleading; 9. the Supplier committing a material Default or failing to provide details of steps being taken and mitigating factors pursuant to Clauses 10.10 to 10.17 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable; 10. the Supplier committing a material Default under any of the following:     * + 1. Clause 5.5(f) (Services);         2. Clauses 10.10 to 10.17 (inclusive) (Promoting Tax Compliance);         3. Clauses 10.18 and 10.21 (Use of Off-shore Tax Structures);         4. Clause 14.8 (Income Tax and National Insurance Contributions);         5. Clause 23 (Protection of Personal Data);         6. Clause 22 (Transparency and Freedom of Information);         7. Clause 21 (Confidentiality);         8. Clause 35 (Compliance);   (vi) in respect of any security requirements set out in Schedule 2.1 (Services Description), Schedule 2.4 (Security Management) or the Baseline Security Requirements; and/or  in respect of any requirements set out in Schedule 9.1 (Staff Transfer);   1. the Supplier commits a breach of any of the requirements set out at Clause 35.5 (Modern Slavery Act); 2. any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (Value for Money); 3. an Insolvency Event occurring in respect of the Supplier or the Guarantor; 4. 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); 5. a change of Control of the Supplier or a Guarantor unless:    * + 1. the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or        2. the Authority has not served its notice of objection within six (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; 6. a change of Control of a Key Sub‑contractor unless, within six (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 15.1 (Appointment of Key Sub‑contractors); 7. any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (Staff Transfer); 8. 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 Agreement; 9. the Supplier:    * + 1. commits an irremediable breach of the Admission Agreement; or        2. commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it; or 10. 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; |
| **“TAAR” or “Targeted Anti-Avoidance Rule”** | | | means provision(s) in any legislation which seeks to prevent avoidance of any Tax; |
| **“Target Performance Level”** | | | the minimum level of performance for a Performance Indicator which is required by the Authority, as set out in respect of the relevant Performance Indicator in the tables in [Annex 1] of Schedule 2.2 (Performance Levels); |
| **“Tax”** | | | means:   1. all forms of tax whether direct or indirect; 2. national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; 3. all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions. levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and 4. any penalty, fine, surcharge, interest, charges or costs relating to any of the above,   in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction; |
| **“Tax Revenue”** | | | means any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier; |
| **“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 Agreement; |
| **“Termination Assistance Notice”** | | | has the meaning given in Paragraph 6.1 of Schedule 8.5 (Exit Management); |
| **“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 6.3 of Schedule 8.5 (Exit Management); |
| **“Termination Date”** | | | the date set out in a Termination Notice on which this Agreement (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 Agreement on a specified date and setting out the grounds for termination; |
| **“Termination Payment”** | | | the payment determined in accordance with Schedule 7.2 (Payments on Termination); |
| **“Termination Services”** | | | the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (Exit Management), and any other services required pursuant to the Termination Assistance Notice; |
| **“Termination Warning Notice”** | | | has the meaning given to it in Clause 33.3; |
| **“Test Issues”** | | | has the meaning given in Schedule 6.2 (Test and Assurance); |
| **“Tests” and “Testing”** | | | any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (Test and Assurance) and “Tested” shall be construed accordingly; |
| **“Test Success Criteria”** | | | has the meaning given in Schedule 6.2 (Test and Assurance); |
| **“Third Party Beneficiary”** | | | has the meaning given in Clause 43.1 (Third Party Rights); |
| **“Third Party COTS IPRs”** | | | Third Party IPRs that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non‑trivial Customer Base; |
| **“Third Party COTS Software”** | | | Third Party Software (including open source software) that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. 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 as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.10; |
| **“Third Party Non‑COTS IPRs”** | | | Third Party IPRs that are not Third Party COTS IPRs; |
| **“Third Party Non‑COTS Software”** | | | Third Party Software that is not Third Party COTS Software; |
| **“Third Party Provisions”** | | | has the meaning given in Clause 43.1 (Third Party Rights); |
| **“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, as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.10**;** |
| **“Transferring Assets”** | | | has the meaning given in Paragraph 8.2(a) of Schedule 8.5 (Exit Management); |
| **“Transferring Authority Employees”** | | | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **“Transferring Former Supplier Employees”** | | | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **“Transferring Supplier Employees”** | | | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **“UK”** | | | the United Kingdom; |
| **“UK GAAP”** | | | means the Generally Accepted Accounting Practice in the UK which is the body of accounting standards and other guidance published from time to time by the UK’s Financial Reporting Council; |
| **“Unacceptable Performance Failure”** | | | the Supplier committing a Performance Failure in respect of 75% or more of the Performance Indicators that are measured in a Service Period [in relation to a Delivery Group]; |
| **“Unrecovered Payment”** | | | has the meaning given in Schedule 7.2 (Payments on Termination); |
| **“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; |
| **“Upgrades”** | | | any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term; |
| **“VAT”** | | | value added tax as provided for in the Value Added Tax Act 1994; [and] |
| **“Working Day”** | | | any day other than a Saturday, Sunday or public holiday in England and Wales. |

# SCHEDULE 2.1

SERVICES DESCRIPTION

**Services Description**

## 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "The authority"  “The supplier” | means HM Revenue & Customs, the contracting authority and receiver of the services;  means the person, firm or company with whom The Authority enters into the Contract |

## **2 INTRODUCTION**

## **2.1 BACKGROUND**

## 2.1.1 The Authority’s cheque and form processing contract is currently administered through an outsourced model.

## 2.1.2 The Authority requires the provision of a cheque and supporting payment documentation processing service.

## 2.1.3 The service consists of three elements:

The provision of scanning hardware capable of scanning and extracting data from cheques and supporting payment documentation, such as payslips, etc.

The provision of operating software capable of;

reconciling cheques and payslips;

validating HMRC reference numbers;

handling exceptions;

sending cheque image and associated metadata files for clearing;

Transferring cheque and payslip data electronically to The Authority’s network;

providing Management Information;

retaining scanned images and data for a period of 7 days

The provision of support service requirements

## 2.1.4 The Authority requires The Supplier to provide a full cheque processing solution, i.e. scanning hardware coupled with software to meet The Authority’s requirements.

## 2.1.5 The hardware is to be located on The Authority’s premises.

## The software, which is not directly related to the initial scanning of cheques, payslips and payment documentation (that which is providing data analysis, exception handling and routing to The Authority and The Authority’s bank) must be hosted externally by The Supplier on a ‘Software as a Service’ (SaaS) basis, including the provision of all associated servers, architecture, connectivity, etc.

## Images and data that are currently held on Shipley servers (owned and maintained by The Supplier) will be transferred to a cloud based solution (also owned and maintained by The Supplier). The requirement is to transfer cheque and payslip data collected from 6 April 2017 and all VAT return data currently held by The Supplier. This data will be purged over the next 20 years. Cheque and payslip information will be weeded after 2 years and VAT returns after 20 years.

## 2.2 **LOCATIONS**

## The Authority requires scanners to be deployed in 2 locations: a.) HMRC, Victoria Street, Shipley, BD98 8AA; b.) HMRC, St Mungo’s Road, Cumbernauld, G67 1YZ As part of The Authority’s wider Building our Future location strategy, these offices will be moving to new Regional Centres within the duration of the contract.

## 2.2.2 Shipley will be moving to Leeds (2020), with Cumbernauld moving to Glasgow (2021). The Authority will require the successful supplier to assist with the relocation, integration and testing in the new locations.

## 2.2.3 To aid the moves of location The Supplier must provide the make, model, dimensions and weight of the scanners and any associated equipment.

## 2.2.4 The Supplier must carry out site surveys in both Shipley and Cumbernauld to ensure that The Supplier is fully aware of the location and access prior to delivery of the scanners and any associated equipment.

## **2.3 HMRC STANDARD OPERATING HOURS**

## 2.3.1 The Authority’s standard operating hours for staff for a normal processing day will be from 06:30 to 20:00 to ensure The Authority’s cheque processing requirements are met each day.

## 2.3.2 The Authority will have in excess of 30 staff available to ensure the loading, scanning, and in-flight exception handling is worked daily.

## **2.4 CONTRACT PREREQUISITE**

## 2.4.1 The Supplier must work with The Authority’s IT Infrastructure team and The Authority’s banking provider, currently Barclays, during the implementation phase of the project

## 2.4.2 The Supplier must work with Barclays to develop and implement the cheque imaging gateway detailed in the functional requirement document.

## **2.5 IMPLEMENTATION**

2.5.1 As referred to in schedule 6.1, The Supplier must provide an implementation plan, an operational go-live date of 04/11/2019 is preferred. The Authority has an absolute requirement for a fully implemented service by 02/03/2020. The Supplier’s implementation plan must take into account as a minimum:

1. Delivery of scanners to site;
2. Commissioning of the scanners; and
3. Full integration of the scanning process with The Authority’s IT infrastructure, including supplying and building the infrastructure for outbound connectivity.

## 2.5.2 Any change to the proposed operational go-live date must be subject to formal written agreement by both parties.

## 2.5.3 The Supplier must ensure that all elements of the solution are fully implemented by the go-live date at both sites.

## 2.5.4 The Authority requires a phased approach to ensure the solution is fully operable. This will be in the form of a four-week period where the solution is utilised for National Insurance Contributions (cheques and payslips only). The volumes for these forms will be c.290 per day. This will take place at the Shipley site, and the solution must be ready to begin this phased implementation by 01/10/2019 (or four weeks prior to the go-live date if this is not 04/11/2019).

## 2.5.5 The Supplier’s implementation plan must incorporate the phased implementation described above.

## 2.5.6 The Supplier’s staff must have Baseline Personnel Security Standard clearance when accessing The Authority’s sites during the implementation phase.

## **3 HARDWARE (SCANNING EQUIPMENT)**

## **3.1 DOCUMENT TYPES**

## 3.1.1 The Supplier must provide scanning equipment that is capable of scanning and processing a variety of documents, including, but not exclusive to:

1. Cheques
2. Payslips – pre-printed or handwritten (19 variations including 4 x A4 size)
3. Other documentation that contains payment information

Examples of the payslips are provided at Appendix D.

## **3.2 VOLUMES**

## 3.2.1 The Supplier must ensure that the scanners are capable of processing the general volume of documents, as detailed in: Appendix A, Cheque, payslip and other volumes processed in Financial Year 2018/2019 Appendix B, Future State – split between sites

## 3.2.2 The Supplier must ensure that the maximum volumes of all document types on any one day, as listed below, can be processed, which takes into account the shift pattern of available staff, as detailed at Section 2.3. Cheques – maximum daily number – 39,000 Payslips – maximum daily number – 39,000 (assume one payslip for every cheque) Other documentation that contains payment information – maximum daily number – 450 See Appendix B for volume split between The Authority’s locations.

## 3.2.3 The Supplier must ensure it provides the appropriate number of scanners to process the volumes at each site, as detailed above and in Appendix A and B.

## 3.2.4 The solution must be able to cope with The Authority’s peak processing periods with a 25% tolerance above the 2018/19 volumes, as detailed in Appendix A.

## 3.2.5 The Supplier must provide a quantity of scanners that allows for the maximum volumes to be processed with contingency in case of breakdown, on the understanding that normal shift pattern hours may be extended on an emergency basis.

## 3.2.6 The Supplier must also demonstrate how they will assist The Authority in the event of a Disaster Recovery situation i.e. The Authority’s primary site (Shipley) being inaccessible.

## **3.3 PHYSICAL SCANNER REQUIREMENTS**

## 3.3.1 The Supplier must ensure that the scanners have: a.) auto-feed mechanisms; b.) ability to load and process a range of mixed size payment documentation; c.) both sides scanned and processed automatically; d.) Magnetic Ink Character Recognition (MICR), Optical Character Recognition (OCR) and Intelligent Character Recognition (ICR) e.) Facility for the operator to monitor the scanning process f.) Ability to notify/alert the operator if faults with hardware or scanner software as they occur

## 3.3.2 The Supplier must ensure that the type of scanners provided have dimensions, operating characteristics (i.e. heat generation) and power supply that can be readily accommodated within a normal office environment.

## 3.3.3 All equipment supplied must be ergonomically designed to ensure that users of the equipment can operate the machinery without long-term physical stress, strains or injury, which gives the operator a positive user experience.

## 3.3.4 As part of the scanning process, The Supplier must ensure that the scan is of an appropriate quality standard to allow all information to be readily viewed in a single image without the need to use zoom functionality when presented on screen in a digital format.

## 3.3.5 As part of the scanning process, The Supplier must ensure that the scan is in an appropriate format to allow all the required metadata to be extracted from the digital image and processed by the software in the manner described in the functional requirements in Appendix E.

## **3.4 SITE VISIT**

## 3.4.1 Prior to delivery of the scanners, The Supplier must conduct site visits and provide assurance that the scanners will be capable of being accessed, installed, reviewing power points and ventilation in each office location.

## **3.5 MAINTENANCE**

## 3.5.1 On the understanding that all maintenance activity can take place with the minimum of production down time, the Supplier must ensure that the following items are available on a same day delivery basis to the Authority’s sites: a.) Consumable items/components, which need replacing by the user to ensure efficient operation of the scanners, b.) Perishable items/components, which need to be routinely replaced by the Supplier’s Technical team as part of a Planned Maintenance visits; and c.) Major Components, which may need to be replaced as a result of breakdown or as a result of inspection during Planned Maintenance visits

## 3.5.2 The Supplier must ensure that all Consumable, Perishable and Major Components needed to ensure that the scanners are fully operational, are manufactured, stocked and remain available for a minimum of five years after delivery of the Scanners.

## 3.5.3 The Supplier must ensure that routine maintenance of the scanners takes place outside of peak periods (mainly January and July).

## 3.5.4 The Supplier must ensure that routine maintenance is planned in advance and dates and times are agreed by The Authority in writing.

## **3.6 REGULATORY REQUIREMENTS**

## 3.6.1 The Supplier must ensure that all scanners comply with the relevant regulatory requirements, which may include, but not be exclusive to: a.) Supply of Machinery Safety Regulations, including the requirement for equipment to be CE marked; b.) Electrical Equipment Safety Regulations; and c.) Waste Electric and Electronic Equipment (WEEE) Regulations 2013

## **4 SOFTWARE AS A SERVICE (SaaS)**

## **4.1 GENERAL SCANNING AND SOFTWARE CAPACITY/VOLUMES REQUIREMENTS**

## 4.1.1 In developing the software, The Supplier must:

1. Review Appendices A and B in order to have a clear understanding of The Authority’s volumes and peak processing periods to ensure the capability to handle The Authority’s volumes consistently throughout the year. This is mandatory and forms part of The Supplier’s Key Performance Indicators (KPIs) to achieve 99% of customer cheques processed on working day 1.
2. Ensure that peaks in service (mainly January and July – see Appendix A for volumes) are accommodated, requiring robust performance monitoring and business continuity processes as well as proactive communication with The Authority leading up to these peaks.
3. Provide software that is able to match up single cheques to single payslips, single cheques to multiple payslips and multiple cheques to single payslips.
4. Provide software that recognises and determines the validity of HMRC tax types from the reference number on cheques, payslips or payment documentation.
5. Ensure that the software has the flexibility to accommodate The Authority in making local changes, e.g. add new job types, update business rules, HMRC customer reference format(s), as and when required.
6. Ensure that The Authority has the ability to update the provider’s software to ensure this is compatible with upgrades to existing or new HMRC corporate systems.
7. Ensure that The Authority has the ability to update the provider’s software to ensure it is compatible with upgrades or changes to The Authority's banking provider.

## 4.1.2 The Authority requires software that must:

1. Capture images and data from cheques, payslips, and documentation that contains payment information
2. Meet The Authority’s business rules, including the reconciliation process connecting customer payments to customer accounts
3. Provide The Authority with an exception handling process, allowing The Authority to repair exceptions
4. Create files from cheques and payslips
5. Transfer files to The Authority
6. Send cheque images and associated metadata for clearing to The Authority’s banking provider
7. Provide the Authority with Management Information

## **4.2 HMRC AND BANKING PROVIDER IT INFRASTRUCTURE**

## 4.2.1 As part of the reconciliation process to connect customer payments to customer accounts, The Authority requires The Supplier to be able to exchange data and send files that are compatible with The Authority’s payment processing system.

## 4.2.2 The Supplier must exchange data with The Authority’s and banking provider’s systems (currently Barclays), as per Appendix C - HMRC Cheque Processing Architecture.

## 4.2.3 The expectation is that the diagram referenced above is likely to be subject to change, subject to the agreement of both parties during discovery phase.

## **4.3 IT INTEGRATION**

## 4.3.1 When developing the software for integration into the Authority’s IT systems, the following elements must be accommodated:

## 4.3.2 Target Architecture

## 4.3.3 All data should reside in the UK, including DR and failover scenarios

## 4.3.4 The Supplier will provide minimum requirements for (amongst other things) infrastructure, operating systems and databases to be provisioned within any other system currently used or hosted by The Authority.

## 4.3.5 Client access to user interfaces should be browser based, without the need for plugins. Should work on mobile as well as desktop/laptop/tablet and supports HMRC accessibility standards.

## 4.3.6 Connectivity

## 4.3.7 Data will be exchanged between the Authority and The Supplier using a secure electronic link of a type approved by the Authority. The Authority's current connectivity standard is either via encrypted internet traffic (HTTPS, TLS 1.2), or through private peering with IPSEC VPN via LINX and the Authority's Crown Hosting environments. One acceptable link type is an IPSec VPN for communication encryption in line with the CESG Prime standard. Other connectivity technologies may be acceptable to the Authority but must be agreed in writing by the Authority.

## 4.3.8 The Supplier must provide any hardware and/or software that it may need in order to implement the agreed electronic link to the Authority, and such hardware and/or software must be compatible with the Authority System.

## 4.3.9 The Supplier must configure such hardware and/or software for the electronic link in order to be fully compatible with the Authority System.

## 4.3.10 Digitised content will be provided to The Authority via a secure link in the prescribed format (currently XML).

## 4.3.11 Transfer Technology

## 4.3.12 For data exchanges over the electronic link (in either direction), The Supplier must support the use of a data transfer technology to be approved by the Authority. The same technology may be used for data transfers in both directions unless the Authority identifies a need to do otherwise. One acceptable technology would be FTP, but other technologies may be used at the discretion of the Authority.

## 4.3.13 The Supplier must provide any software or other components/configurations necessary to allow the use of the agreed transfer technology.

## 4.3.14 The Supplier must ensure the transfer technology is implemented in a configuration that is acceptable to the Authority and compatible with the Authority System (e.g. ‘connection modes’ in the case of FTP).

## 4.3.15 Hosting

## 4.3.16 This section sets out the longer-term vision for the Authority’s approach to hosting i.e. the physical and virtual components for compute and storage up to but not including the operating system.

## 4.3.17 The Authority will no longer require its own dedicated data centres. All server environments will be hosted in virtualised multi-tenanted clouds sourced from a small number of providers. All providers will be managed using consistent processes and monitored using the same metrics.

## 4.3.18 Virtual servers will run a standardised set of commodity operating systems. This will reduce technical management overheads and simplify skillset and tooling requirements. Resources will not be sized permanently to cope with peak demands, instead they will be flexible with compute and storage resources able to be added and removed as required.

## 4.3.19 The initial provisioning and ongoing management and optimisation of infrastructure solutions will be the responsibility of the delivery groups including the Cloud Delivery Group. This includes adjusting infrastructure capacity as required to:

1. Dynamically match capacity to demand (saving cost, avoiding over-provisioning, and supporting the green agenda);
2. Provide increased resilience e.g. scaling up capacity in different locations as a response to failure; and
3. Take advantage of A/B deployment techniques.

## 4.3.20 The Authority expects all disaster tolerance to be built into all solution designs as standard, either by making greater use of active deployments, or through the increased use of automation to provision or scale disaster recovery facilities on-demand.

## 4.3.21 Where appropriate, the Authority will fully outsource particular services using Software as a Service (SaaS) to avoid infrastructure considerations entirely. All SaaS services will be subject to standardised security assessments as part of the on-boarding process.

## 4.3.22 There should be alignment with The Authority’s security standards. Data should be uniquely encrypted, and The Authority would prefer to bring its own keys. Supplier staff should either have no access to The Authority’s data or be SC cleared.

## 4.3.23 Identity

## 4.3.24 Where The Authority’s staff authenticate to services it should be via their primary identity provided by the Authority’s Azure Active Directory instance. This should preferably use OAuth 2.0 and OpenID Connect. SAML is acceptable as an alternative should OAuth 2.0 not be supported or meet the requirements.

## 4.3.25 Services should externalise authorisation, preferably through the use of AzureAD groups. Alternative patterns for externalising authorisation to The Authority’s role-based access control systems may be acceptable to the Authority, but must be agreed in writing by the Authority.

## 4.3.26 Identities authorised to use the services that are not part of The Authority’s identity domains may require additional controls such as multi-factor authentication and must be agreed with the Authority in writing.

## **4.4 PLANNED DOWNTIME, SOFTWARE UPDATES AND SOFTWARE MAINTENANCE**

## 4.3.1 The Supplier must ensure that software updates and maintenance takes place outside of peak periods (mainly January and July).

## 4.3.2 The Supplier must ensure software updates are planned in advance, tested and signed off by The Authority before going live.

## 4.3.3 The Supplier must ensure there is an option to regress if an update fails in the live environment.

## **4.5 BUSINESS CONTINUITY AND DISASTER RECOVERY**

## 4.4.1 As referred to in Schedule 8.6, The Supplier must provide a BCDR plan, which details how the service will be continued should there be a breakdown in The Supplier’s IT infrastructure, such as a server becoming unavailable.

## **4.6 FUNCTIONAL REQUIREMENTS**

## 4.5.1 The Authority has produced a full functional requirements document that provides more information on the high-level requirements detailed above.

## 4.5.2 The Supplier must ensure that the software has all the functionality described in the Functional Requirements document. This can be found at Appendix E.

## **5 SUPPORT SERVICE REQUIREMENTS**

## **5.1 SUPPORT SERVICE**

## 5.1.1 The Supplier must offer ongoing support either via a dedicated helpline or specific contact points/escalation routes for both:

1. Hardware; and
2. IT/Software.

## 5.1.2 In respect of hardware breakdowns, The Supplier must attend site within 4 hours of being contacted.

## 5.1.3 The software platform must be uninterrupted during normal office hours, referred to in Section 2.3. If a fault occurs which means this is not the case, software must be back operational within a maximum of 1 hour of the fault occurring.

## 5.1.4 This service will be vital especially during peak periods, to ensure that The Supplier meets the KPI’s for processing and banking 99% of cheques on working day 1.

## **5.2 TRAINING AND GUIDANCE**

## 5.2.1 The Supplier must provide on-site, face to face training on the full end to end operation of all elements which will be operated by HMRC, including loading, scanning and the exception handling system. This must be carried out in a controlled environment, before moving to the live testing phase.

## 5.2.2 The Supplier must provide end to end training manuals, help cards, flowcharts etc, in addition to the face to face training.

## 5.2.3 Updated guidance must accompany any updates to Hardware and/or Software etc., when required.

## **5.3 CONTRACT MANAGER/CONTRACT MANAGEMENT TEAM**

## 5.3.1 The Supplier must provide a Representative/Contract Manager/Contract Management team to facilitate the business as usual activities associated with the service.

## 5.3.1 The Contract Manager will liaise with The Authority’s representative/contract manager/contract management team as may be applicable given the nature and the extent of services required.

## 5.3.2 The primary contract management activity from both parties will be to monitor, maintain and improve the service performance as detailed in Schedule 2.2.

## 5.3.3 To effectively manage the contract, both parties will contribute to, and agree, a formal contract management plan, as part of the implementation phase.

## 5.3.4 Contract management will form part of the overall governance process, as referred to in Schedule 8.1.

## **5.4 MANAGEMENT INFORMATION (MI) REPORTING**

## 5.4.1 The Supplier shall make available accurate daily and on occasions ad-hoc MI covering all facets of the Service offering as detailed at Schedule 2.1 to The Authority.

## 5.4.2 The Supplier will provide the report on daily, weekly and cumulative month-by-month basis, which should include the following as a minimum:

1. Date
2. Time
3. Cheques scanned – Volume
4. Cheques processed – Volume & Value
5. Cheques rejected – Volume
6. Bank Giro – Volume & Value
7. Giro Bank – Volume & Value
8. Nils – Volume
9. Dishonoured Payments – Volume & Value
10. Exceptions Identified – Volume & Value
11. Exceptions Cleared by HMRC – Volume, Value & Operator ID
12. Exceptions waiting to be worked by HMRC – Volume & Value
13. Ability to filter by job type/Head of Duty tax type (to individual transaction level)

## **5.5. INNOVATION**

## 5.5.1 Whilst there are prescriptive elements to the requirement, The Authority requires The Supplier to offer innovative options which would continuously improve the service and provide efficiencies in the processes, including the need to make improvements to accommodate any changes in legislation.

**Appendices**

**Appendix A Cheque, payslip and other volumes processed in Financial Year 2018/2019**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Month** | **Cheques Processed** | **Payslips Processed** | **Cheque and Payslip Totals** | **Other Documentation with Payment Information** | **Grand Total - Cheques, Payslips and Other Doc's** | **Max Daily Amount (cheques and payslips)** |
| April | 167,133 | 167,133 | 334,266 | 9,045 | 343,311 | 21,252 |
| May | 137,343 | 137,343 | 274,686 | 9,183 | 283,869 | 21,548 |
| June | 132,779 | 132,779 | 265,558 | 9,205 | 274,763 | 18,368 |
| July | 344,366 | 344,366 | 688,732 | 10,458 | 699,190 | 59,342 |
| August | 153,696 | 153,696 | 307,392 | 6,612 | 314,004 | 24,796 |
| September | 114,508 | 114,508 | 229,016 | 6,807 | 235,823 | 18,458 |
| October | 138,300 | 138,300 | 276,600 | 8,343 | 284,943 | 20,016 |
| November | 119,790 | 119,790 | 239,580 | 7,113 | 246,693 | 23,430 |
| December | 144,606 | 144,606 | 289,212 | 7,746 | 296,958 | 30,320 |
| January | 435,472 | 435,472 | 870,944 | 8,597 | 879,541 | 78,092 |
| February | 220,171 | 220,171 | 440,342 | 7,622 | 447,964 | 57,190 |
| March | 146,328 | 146,328 | 292,656 | 9,740 | 302,396 | 22,076 |
| **Total** | **2,254,492** | **2,254,492** | **4,508,984** | **100,471** | **4,609,455** | **-** |

The volume of cheques is expected to decrease year on year, in line with the declining use of cheques within the industry.

HMRC also process circa 85K additional cheques, that are not currently in scope of this project, and therefore not included in the volumes in the table above. However, these may come into scope during the award period of this contract.

**Appendix B – Future State – split between sites**

**Shipley / Leeds**

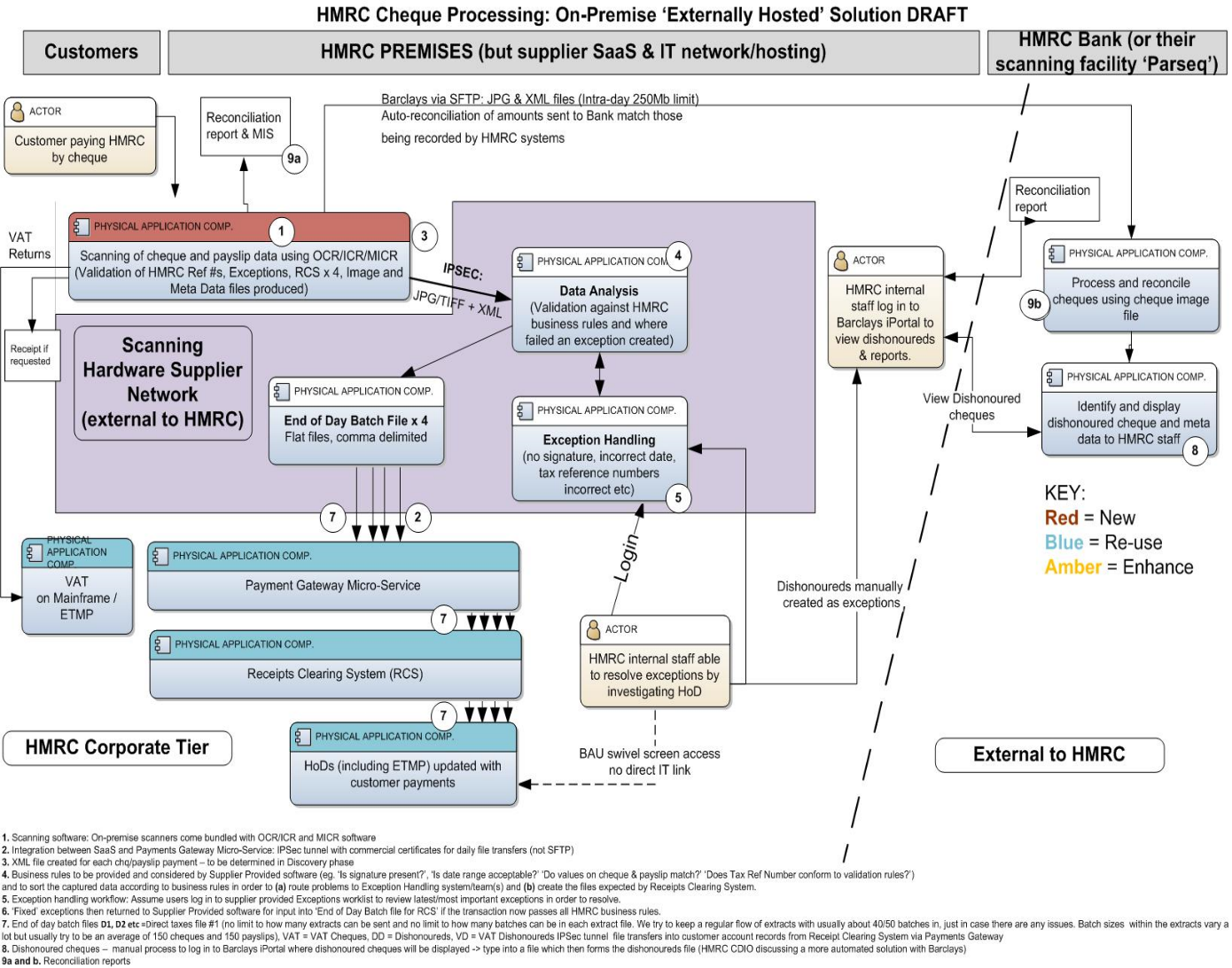
|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Month** | **Cheques Processed** | **Payslips Processed** | **Cheque and Payslip Totals** | **Other Documentation with Payment Information** | **Grand Total - Cheques, Payslips and Other Doc's** | **Max Daily Amount (cheques and payslips)** |
| April | 165,889 | 165,889 | 331,778 | 8,996 | 340,774 | 21,022 |
| May | 136,115 | 136,115 | 272,230 | 9,158 | 281,388 | 21,258 |
| June | 131,388 | 131,388 | 262,776 | 9,182 | 271,958 | 18,110 |
| July | 343,302 | 343,302 | 686,604 | 10,427 | 697,031 | 59,060 |
| August | 152,384 | 152,384 | 304,768 | 6,590 | 311,358 | 24,578 |
| September | 113,434 | 113,434 | 226,868 | 6,779 | 233,647 | 18,260 |
| October | 137,323 | 137,323 | 274,646 | 8,313 | 282,959 | 19,874 |
| November | 118,419 | 118,419 | 236,838 | 7,091 | 243,929 | 23,220 |
| December | 143,865 | 143,865 | 287,730 | 7,714 | 295,444 | 30,122 |
| January | 434,485 | 434,485 | 868,970 | 8,556 | 877,526 | 77,922 |
| February | 219,048 | 219,048 | 438,096 | 7,605 | 445,701 | 56,942 |
| March | 144,923 | 144,923 | 289,846 | 9,723 | 299,569 | 21,812 |
| **Total** | **2,240,575** | **2,240,575** | **4,481,150** | **100,134** | **4,581,284** | - |

**Cumbernauld / Glasgow**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Month** | **VAT Cheques (included in App A)** | **VAT Payslips (included in App A)** | **VAT Cheque and Payslip Totals** | **Other Documentation with Payment Information** | **Grand Total - Cheques, Payslips and Other Doc's** | **Max Daily Amount (cheques and payslips)** |
| April | 1,244 | 1,244 | 2,488 | 49 | 2,537 | 230 |
| May | 1,228 | 1,228 | 2,456 | 25 | 2,481 | 290 |
| June | 1,391 | 1,391 | 2,782 | 23 | 2,805 | 258 |
| July | 1,064 | 1,064 | 2,128 | 31 | 2,159 | 282 |
| August | 1,312 | 1,312 | 2,624 | 22 | 2,646 | 218 |
| September | 1,074 | 1,074 | 2,148 | 28 | 2,176 | 198 |
| October | 977 | 977 | 1,954 | 30 | 1,984 | 142 |
| November | 1,371 | 1,371 | 2,742 | 22 | 2,764 | 210 |
| December | 741 | 741 | 1,482 | 32 | 1,514 | 198 |
| January | 987 | 987 | 1,974 | 41 | 2,015 | 170 |
| February | 1,123 | 1,123 | 2,246 | 17 | 2,263 | 248 |
| March | 1,405 | 1,405 | 2,810 | 17 | 2,827 | 264 |
| **Total** | **13,917** | **13,917** | **27,834** | **337** | **28,171** | **-** |

**\*Cumbernauld / Glasgow hardware solution must be able to process 30,000 items per day, in order to meet The Authority’s internal BCDR requirements.**

**Appendix C – HMRC Cheque Processing Architecture**



**Appendix D – Payslip Examples**



**Appendix E – Functional Requirements**



# SCHEDULE 2.2

PERFORMANCE LEVELS

*Redacted*

# SCHEDULE 2.4

SECURITY management

## **DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Breach of Security”** | the occurrence of:   1. any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or 2. 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 Agreement; and/or 3. a failure to comply with the personnel security requirements, as set out in the Security Management Plan,   in either case as more particularly set out in the Security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements; |
| **"CCP"** | CESG Certified Practitioner; |
| **"CESG"** | the UK Government's national technical authority for information assurance; |
| **“CHECK Scheme”** | The scheme for penetration testing of data processing systems operated by the CESG; |
| **"CPA"** | the CESG Commercial Product Assurance scheme; |
| **"CPNI"** | Centre for Protection of National Infrastructure; |
| **“ISMS”** | the information security management system and processes developed by the Supplier in accordance with Paragraph 3 as updated from time to time in accordance with this Schedule; |
|  |  |
|  |  |
| **“Security Policy Framework”** | the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier; |
| **“Security Management Plan”** | is the document produced by the Supplier, a copy of which is at Annex 2; |
| **“Security Questionnaire”** | the questionnaire produced by the Authority which, when completed by the Supplier, will form the basis of the Supplier’s Security Management Plan; and |
| **“Security Tests”** | tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security. |

## **INTRODUCTION**

### The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.

### The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

### Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

### The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.

### The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own buildings, organisation and systems and on request shall supply this document as soon as practicable to the Authority.

### The Supplier's own security policy should, align with the contents of the Security Management Plan and incorporate CESG and CPNI best practice.

### The Authority and the Supplier acknowledge that a compromise of either the Supplier or the Authority’s security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

## **ISMS**

### By the date specified in the Implementation Plan,Within twenty-one (21) days] of the Effective Date, the Supplier shall develop and submit to the Authority for the Authority’s approval in accordance with Paragraph 3.6 an ISMS (information security management system) for the purposes of this Agreement, which:

* + 1. shall have been tested in accordance with Schedule 6.2 (*Test and Assurance*); and
    2. shall comply with the requirements of Paragraphs 3.3 to 3.5.

### The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and agrees that it shall be responsible for the effective performance of the ISMS.

### The ISMS shall:

#### unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;

#### meet the relevant requirements in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and

#### at all times provide a level of security which:

##### is in accordance with Law and this Agreement;

##### as a minimum demonstrates Good Industry Practice;

##### complies with the Baseline Security Requirements;

##### addresses issues of incompatibility with the Supplier’s own organisational security policies;

##### meets any specific security threats of immediate relevance to the Services and/or Authority Data;

##### complies with the security requirements as set out in Schedule 2.1 (*Services Description*);

##### complies with the Authority’s IT policies; and

##### is in accordance with the Security Policy Framework;

#### document the security incident management processes and incident response plans;

#### document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and

#### be certified by (or by a person with the direct delegated authority of) a Supplier’s main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

### Subject to Clause 20 (*Authority Data and Security Requirements*) the references to standards, guidance and policies set out in Paragraph 3.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

### In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.

### If the ISMS submitted to the Authority pursuant to Paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

### Approval by the Authority of the ISMS pursuant to Paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

## **SECURITY MANAGEMENT PLAN**

### Within twenty (20) Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

### The Security Management Plan shall:

#### be based on the Supplier's final response to the Authority's Security Questionnaire, a copy of which is set out in Annex 2;

#### comply with the Baseline Security Requirements set out in Annex 1;

#### identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;

#### detail the process for vetting staff at the appropriate security level with reference to the level of access staff will have to Authority Data, managing any security risks from Sub‑contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

#### unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

#### set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);

#### demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, ‘platform as a service’ offerings from the G-Cloud catalogue);

#### set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in Schedule 6.1 (*Implementation*) for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;

#### set out the scope of the Authority System that is under the control of the Supplier;

#### be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards;

#### be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and

#### be in accordance with the Security Policy Framework.

### If the Security Management Plan submitted to the Authority Representative pursuant to Paragraph 4.1 is approved by the Authority Representative, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority Representative, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority Representative for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority Representative. If the Authority Representative does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority Representative pursuant to this Paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

### Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

## **AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN**

### The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier within ten (10) Working Days of any Breach of Security and further at least annually to reflect:

#### emerging changes in Good Industry Practice;

#### any change or proposed change to the IT Environment, the Services and/or associated processes;

#### any new perceived or changed security threats; and

#### any reasonable change in requirements requested by the Authority.

### The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

#### suggested improvements to the effectiveness of the ISMS;

#### updates to the risk assessments;

#### proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and

#### suggested improvements in measuring the effectiveness of controls.

### Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

### The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments 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 Agreement.

## **SECURITY TESTING**

### The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests 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 Security Tests shall be agreed in advance with the Authority. The Supplier shall conduct, document and provide to the Authority a risk assessment to enable the Authority to consider whether a Security Test should be carried out. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier’s ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

### The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

### Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier’s ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.

### Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

### If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of Clause 27 (*Rectification Plan Process*).

## **ISMS COMPLIANCE**

### The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements.

### If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part. The Supplier shall reimburse in full the costs incurred by the Authority in obtaining such audit.

### If, as a result of any such independent audit as described in Paragraph 7.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and, (as said above), shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **BREACH OF SECURITY**

### Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or attempted Breach of Security.

### Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:

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

##### minimise the extent of actual or potential harm caused by any Breach of Security;

##### remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;

##### apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier’s ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;

##### prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

##### supply any requested data to the Authority or the Computer Emergency Response Team for UK Government (“GovCertUK”) on the Authority’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and

#### as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

### In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

## **VULNERABILITES AND CORRECTIVE ACTION**

### The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority’s information.

### The severity of threat vulnerabilities for Supplier Software and Third Party 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 ISMS and using the appropriate vulnerability scoring systems including:

#### 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 http://nvd.nist.gov/cvss.cfm); and

#### Microsoft’s ‘Security Bulletin Severity Rating System’ ratings ‘Critical’, ‘Important’, and the two (2) remaining levels (‘Moderate’ and ‘Low’) respectively.

### The Supplier shall procure the application of security patches to vulnerabilities (whether such patches are entirely related to security or related in part to security) within a maximum period from the public release of such patches with those vulnerabilities categorised as ‘Critical’ within fourteen (14) days of release, ‘Important’ within thirty (30) days of release and all ‘Other’ within sixty (60) Working Days of release, except where:

#### the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;

#### the application of a ‘Critical’ or ‘Important’ security patch adversely affects the Supplier’s ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

#### the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

### The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier Software and Third Party Software to be upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the ‘n-1 version’) throughout the Term unless:

#### where upgrading such Supplier Software and Third Party Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within twelve (12) months of release of the latest version; or

#### is agreed with the Authority in writing.

### The Supplier shall:

#### implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

#### ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

#### ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;

#### pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3(e);

#### from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

#### propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;

#### 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 Solution and IT Environment); and

#### inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.

### If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 9, the Supplier shall immediately notify the Authority.

### A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

1. **ANNEX 1: Baseline Security Requirements**

## **Higher Classifications**

### The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

## **End User Devices**

### When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the CESG to at least Foundation Grade, for example, under CPA.

### Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (https://www.gov.uk/government/collections/end-user-devices-security-guidance--2). As a minimum, the security standards must include Assurance Framework, Ten Critical Steps and Requirements. Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

## **Data Processing, Storage, Management and Destruction**

### The Supplier and Authority recognise the need for the Authority’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.

### The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority information is only carried out offshore within:

#### the European Economic Area (EEA);

#### in the US if the Supplier and or any relevant Subcontractor have signed up to an agreement which ensures a level of protection which have been defined as adequate by the EU Commission; or

#### in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission and approval has been provided by the Authority's Digital Information Officer or Office of Government Serious Information Risk Officer.

### The Supplier shall:

#### provide the Authority with all Authority Data on demand in an agreed open format;

#### have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;

#### securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and

#### securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

## **Networking**

### The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).

### The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

## **Security Architectures**

### The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.

### When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx) for all bespoke or complex components of the Supplier Solution.

## **Personnel Security**

### Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work (including nationality and immigration status).

### The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Authority Data.

### The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.

### All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

### Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.

### Notwithstanding the Supplier's obligation to ensure that the Security Management Plan is implemented and followed, the Supplier shall ensure that the Supplier Personnel are promptly informed of action taken in relation to any failure to do so.

### The Supplier shall ensure that Supplier Personnel complete the security questionnaire as provided by the Authority from time to time.

### The Supplier shall perform the Off-Shore Personnel Security Checks in relation to any proposed Off-Shore Personnel prior to their engagement to the reasonable satisfaction of the Authority in the delivery of the Services under this Agreement.

## **Identity, Authentication and Access Control**

### The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the ‘principle of least privilege’, users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

## **Audit and Monitoring**

### The Supplier shall collect audit records which relate to security events in the systems 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:

#### Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

#### Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

### The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.

### The Supplier shall retain audit records collected in compliance with Paragraph 7.1 for a period of at least six (6) months.

**ANNEX 2: Security Management Plan**

*Redacted*

# SCHEDULE 2.5

Insurance Requirements

Insurance Requirements

## OBLIGATION TO MAINTAIN INSURANCES

### Without prejudice to its obligations to the Authority under this Agreement, including its indemnity 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.

### 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.

### The Insurances shall be taken out and maintained with insurers who are:

#### of good financial standing;

#### appropriately regulated; and

#### except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.

### Where any Insurances are provided by an Affiliate of the Supplier, the Supplier shall provide to the Authority on the Effective Date (or inception of the relevant Insurances, if later) and thereafter within ten (10) Working Days of written request from the Authority evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Authority. In the absence of a Financial Distress Event, the Authority shall not make any such request more than annually.

### The Supplier shall ensure that the public and products liability policy that it has or puts in place 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 Services and for which the Supplier is legally liable.

## GENERAL OBLIGATIONS

Without limiting the other provisions of this Agreement, the Supplier shall:

#### 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;

#### promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

#### 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.

## FAILURE TO INSURE

### The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

### 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.

## EVIDENCE OF INSURANCES

The Supplier shall upon the Effective Date and within fifteen (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 acceptanceby the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

## AGGREGATE LIMIT OF INDEMNITY

Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

#### if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

##### details of the policy concerned; and

##### its proposed solution for maintaining the minimum limit of indemnity specified; and

#### if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Supplier shall:

##### ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or

##### if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

## CANCELLATION, SUSPENSION, TERMINATION OR NON-RENEWAL

### Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

### Without prejudice to the Supplier’s obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

## INSURANCE CLAIMS

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

### Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £100,000 (one hundred thousand pounds) relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

### Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

### Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

# ANNEX 1: Required Insurances

# PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

## Insured The Supplier

## Interest

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:

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

#### loss of or damage to 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 Agreement.

## Limit of indemnity

Not less than £5,000,000 (five million pounds) in respect of any one occurrence, the number of occurrences being unlimited, but £15,000,000 (fifteen million pounds) in the aggregate per annum in respect of products and pollution liability.

## Territorial limits

United Kingdom

## Period of insurance

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

## Cover features and extensions Indemnity to principals clause.

## Principal exclusions:

### War and related perils.

### Nuclear and radioactive risks.

### Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

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

### Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

### 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.

### Liability arising from the ownership, possession or use of any aircraft or marine vessel.

### Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

## Maximum deductible threshold Not to exceed £[threshold to be agreed with the bidder/Supplier] for each and every third party property damage claim (personal injury claims to be paid in full).

# PART B: PROFESSIONAL INDEMNITY INSURANCE

NOT USED

# 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.

# SCHEDULE 2.8

Data Processing and List of Sub-processors

**Data Processing and List of Sub-Processors**

## DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Data Protection Impact Assessment”** | means an assessment by the Controller of the impact of the processing on the protection of Personal Data; |
| **“Data Protection Officer”** | has the meaning given in the Relevant Data Protection Laws; |
| **“Data Subject”** | has the meaning given in the Relevant Data Protection Laws; |
| **“Data Subject Access Request”** | a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data; |
| **"GDPR"** | means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC), along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time; |
| **“Off-shore Location”** | any place outside of the United Kingdom; |
| **“Personal Data Breach”** | means:  a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;  a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or  any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Personal Data; |
| **“Processor”** | has the meaning given in the Relevant Data Protection Laws; |
| **“Sanitised Personal Data”** | data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified; |
| **"Standard Contractual Clauses"** | means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the GDPR) which subsequently amends, replaces or supersedes these. |

## 1 **PROTECTION OF PERSONAL DATA**

### 1.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is the Controller and that the Supplier is the Processor, and that the processing may not be determined by the Supplier.

### 1.2 The Supplier shall:

#### (a) not Process or transfer the Personal Data and Sanitised Personal Data other than in accordance with the Authority's written instructions, as set out in Annex 1, unless required by EU or member state law or UK Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data and Sanitised Personal Data, unless prohibited by law;

#### (b) acknowledge that the provision of the Services is restricted to the Processing of the types of Personal Data and categories of Data Subject set out in Part 1 of Annex 1, and shall, with the Authority’s written consent, update the details in Annex 1 from time to time as necessary;

#### (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements)* and having regard to the:

##### (i) nature of the data to be protected;

##### (ii) harm that might result from a Personal Data Breach;

##### state of technological development; and

##### cost of implementing any measures;

#### (d) not disclose or transfer the Personal Data and Sanitised Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data and Sanitised Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);

#### (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and Sanitised Personal Data and ensure that the Supplier Personnel:

##### (i) are aware of and comply with the Supplier’s duties under this Paragraph 1 and Clause 20 *(Authority Data and Security Requirements)* and 21 (*Confidentiality*);

##### (ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;

##### are informed of the confidential nature of the Personal Data and Sanitised Personal Data and do not publish, disclose or divulge any of the Personal Data and Sanitised Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;

##### have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the Relevant Data Protection Laws); and

##### retain evidence of the steps taken in respect of Paragraphs 1.2(e)(i) to 1.2(e)(iv) above for the Authority’s inspection;

#### (f) notify the Authority immediately upon becoming aware of a reasonably suspected, “near-miss” or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the GDPR. Such notification shall as a minimum:

##### (i) describe the nature of the Personal Data Breach, the categories and approximate numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

##### (ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;

##### describe the likely consequences of the Personal Data Breach; and

##### describe the measures taken or proposed to be taken to address the Personal Data Breach.

#### (g) co‑operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, “near-miss” or actual Personal Data Breach including but not limited to:

* + - 1. documenting any such Personal Data Breaches and reporting them to any supervisory authority;
      2. taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
      3. conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;

#### notify the Authority immediately if it receives:

* + - 1. from a Data Subject (or third party on their behalf):
         1. a Data Subject Access Request (or purported Data Subject Access Request);
         2. a request to rectify, any inaccurate Personal Data;
         3. a request to have any Personal Data erased;
         4. a request to restrict the Processing of any Personal Data;
         5. a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any third party;
         6. an objection to any Processing of Personal Data;
         7. any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;
      2. any communication from the Information Commissioner’s Office or any other regulatory authority in connection with Personal Data; or
      3. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

#### (i) not, without the Authority’s prior written consent, and subject also to Clause 24 (*Publications*)*,* make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Paragraph 1.2(h)(i)-(iii);

#### (j) taking into account the nature of the processing, provide the Authority with full assistance in relation to either Party’s obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at Paragraph 1.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

(i) the Authority with full details and copies of the complaint, communication or request;

(ii) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Relevant Data Protection Laws;

(iii) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(iv) assistance as requested by the Authority following any Personal Data Breach;

(v) assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner’s Office;

#### (k) without prejudice to Paragraph 1.2(a), not without the prior written consent of the Authority:

* + - 1. convert any Personal Data for “big data” analysis or purposes; or
      2. match or compare any Personal Data with or against any other Personal Data (whether the Supplier’s or any third party’s);

and in each case the Supplier shall only take the steps set out in (i) to (ii) above strictly to the degree required to fulfil its obligations under this Agreement.

### 1.3 The Supplier’s obligation to notify under Paragraph 1.2(f) and 1.2(h) shall include the provision of further information to the Authority in phases, as details become available.

### 1.4 Insofar as the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.

### 1.5 The Supplier must obtain the prior written consent of the Authority before appointing any Sub‑contractor or other third party to Process any Personal Data and Sanitised Personal Data ("**Sub**‑**processor**") and the Supplier shall remain fully liable to the Authority and any other Service Recipient for any failure by a Sub‑processor to fulfil its obligations in relation to the Processing of any Personal Data and Sanitised Personal Data. Such consent shall be conditional upon:

#### (a) the use of any Sub‑processor being otherwise in accordance with Clause 15 (*Supply Chain Rights and Protections*), Schedule 4.3 (*Notified and Key Sub-contractors*) and Paragraph 1.7; and

#### (b) the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

### 1.6 In accordance with Paragraph 1.5, the Authority consents to the use by the Supplier as at the Effective Date of the Sub‑processors listed in Part B of Annex 1 which shall be updated as required with the written consent of the Authority.

### 1.7 The Supplier shall procure that all Sub-processors:

#### (a) prior to commencing the Processing of any Personal Data and Sanitised Personal Data enter into a written contract in relation to the Processing with either the Authority or the Supplier which shall include substantially the same data protection obligations on the Sub‑processor as are imposed on the Supplier by this Agreement and which shall set out the Sub-processor’s agreed Processing activities in the same or substantially similar form as provided at Part A of Annex 1; or

#### (b) insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data and Sanitised Personal Data to any Off-shore Location in accordance with Paragraph 1.8, it shall incorporate the Standard Contractual Clauses or such other mechanism as directed by the Authority to ensure the adequate protection of the transferred Personal Data and Sanitised Personal Data;

#### (c) act in accordance with this Paragraph 1.

### 1.8 The Supplier shall not Process or otherwise transfer any Personal Data and Sanitised Personal Data in or to any Offshore Location

### 1.9 The Supplier shall ensure that the Authority complies with any obligations under the Relevant Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority’s obligations under the Relevant Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. In connection with this obligation, the Supplier shall:

#### (a) immediately inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;

#### (b) provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:

##### (i) a systematic description of the envisaged processing operations and the purpose of the processing;

##### (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

##### (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and

##### (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

#### (c) implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Article 32 of the GDPR, including by:

##### (i) pseudonymising or encrypting Personal Data and Sanitised Personal Data with the written consent of the Authority;

##### (ii) ensuring the on‑going confidentiality, integrity, availability and resilience of Processing systems and services;

##### (iii) ensuring a means to restore the availability of and access to Personal Data and Sanitised Personal Data in a timely manner following any physical or technical incident; and

##### (iv) having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures; and

#### (d) at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.

### 1.10 The Supplier shall not cause the Authority to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:

#### (a) adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR;

#### (b) designating a Data Protection Officer if required by the Relevant Data Protection Laws;

#### (c) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:

##### (i) the Processing is not occasional;

##### (ii) the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

##### (iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

#### (d) reporting any suspected non‑compliance or actual non‑compliance with this Paragraph 1 to the Authority immediately upon becoming aware of such non‑compliance.

### 1.11 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor, and make available to the Authority or the Authority’s designated auditor all information necessary to demonstrate compliance with this Paragraph.

**Data Protection Indemnity**

### 1.12 The Supplier will indemnify the Authority and each other Service Recipient against:

#### (a) all losses (including all direct, indirect and consequential losses) and liabilities, which shall include without limitation all amounts paid to a regulator by way of a fine, penalty, charge or payment (including a voluntary payment) and all payments made to Data Subjects including without limitation those made on a voluntary basis;

#### (b) all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement and expenses; and

#### (c) all damages and expenses

that the Authority or the Service Recipient (as applicable) does or will incur or suffer (including without limitation in relation to all claims or proceedings made, brought or threatened against the Authority or Service Recipient (as applicable) and/or in defending or settling any actual or threatened claims or proceeding), in each case arising out of or in connection with any breach by the Supplier or any Sub processor of any of its obligations under this Paragraph 1 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) or any act or omission by the Supplier or a Sub processor that causes the Authority or any other Service Recipient to breach any obligation under the Relevant Data Protection Laws.

### 1.13 For the avoidance of doubt, nothing in this Agreement relieves the Supplier of its own direct responsibilities and liabilities under the GDPR.

**ANNEX 1 - DATA PROCESSING AND LIST OF SUB-PROCESSORS**

Introduction

Part A of this Annex lists the types of Personal Data and categories of Data Subject which the Supplier will Process in its provision of the Services together with a description of the nature, purposes and duration of the Processing, the subject matter of the Processing, and the retention policy in respect of that data, and has been collated in accordance with Paragraph 1.2(a) and (b).

Part B of this Annex lists the Sub-Processors agreed by the Parties in accordance with Paragraph 1.5.

**Part A: Data Processing**

1. The Supplier shall comply with any further written instructions from the Authority with respect to Processing.
2. Any such further instructions shall be incorporated into this Schedule.

*Redacted*

**Part B: Sub-processors as at the Effective Date**

**n/a**

# SCHEDULE 3

Authority RESPONSIBILITIES

**Authority Responsibilities**

## INTRODUCTION

### The responsibilities of the Authority set out in this Schedule shall constitute the "Authority Responsibilities" under this Agreement. Any other obligations shall not be "Authority Responsibilities" and the Authority shall have no liability in respect of the same unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.

### The responsibilities of the Authority specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

## GENERAL OBLIGATIONS

The Authority shall:

* + 1. 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. provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Agreement as defined in the Transition Plan;
    3. 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 Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
    4. 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 Agreement, 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).

# SCHEDULE 4.1

SUPPLIER SOLUTION

Supplier Solution

*Redacted*

# SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Information

*Redacted*

# SCHEDULE 5

**IPR**

**IPR**

## THE SOFTWARE

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

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

## SUPPLIER SOFTWARE

The Supplier Software is:

*Redacted*

THIRD PARTY SOFTWARE

The Third Party Software is:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Third Party Software** | **Supplier** | **Purpose** | **Number of Licences** | **Restrictions** | **Number of Copies** | **Type (COTS or Non‑COTS)** |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

## OTHER IPR

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

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

## THIRD PARTY IPRs

The Third Party IPRs are:

|  |  |
| --- | --- |
| **Third Party IPRs** | **Description** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

## SUPPLIER BACKGROUND IPRS

The Supplier Background IPRs are:

*Redacted*

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

**[Supplier letterhead]**

**[*Insert Authority***

***Name and Address*]**

**[*Date*]**

Dear Sirs

**LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs**

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

In accordance with Clause 17.2 of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.2 of the Agreement.

Yours faithfully,

Signed:

**On behalf of [*name of the Supplier*]**

# ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [***date***] 20

**BETWEEN:**

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

**WHEREAS:**

1. [*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.
2. The Authority wishes to grant a sub‑licence to the Sub‑licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub‑licence**”).
3. It is a requirement of the Contract that, before the Authority grants such sub‑licence to the Sub‑licensee, the Sub‑licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

**IT IS AGREED as follows:**

## Interpretation

### In this Agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| **“Confidential Information”** | means:  Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub‑licensee pursuant to or in connection with the Sub‑licence that relates to: |
|  | the Supplier; or |
|  | the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier; |
|  | the source code and the object code of the software sub‑licensed to the Sub‑licensee pursuant to the Sub‑licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub‑licence; |
|  | other Information provided by the Authority pursuant to this Agreement to the Sub‑licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub‑licensee’s attention or into the Sub‑licensee’s possession in connection with the Sub‑licence; and |
|  | Information derived from any of the above but not including any Information that: |
|  | was in the possession of the Sub‑licensee without obligation of confidentiality prior to its disclosure by the Authority; |
|  | the Sub‑licensee obtained on a non-confidential basis from a third party who is not, to the Sub‑licensee’s knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub‑licensee; |
|  | 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 |
|  | 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 |
| **“Sub‑licence”** | has the meaning given to that expression in recital (B) to this Agreement. |

### In this Agreement:

#### a reference to any gender includes a reference to other genders;

#### the singular includes the plural and vice versa;

#### the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

#### 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;

#### headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

#### references to Clauses are to clauses of this Agreement.

## Confidentiality Obligations

### In consideration of the Authority entering into the Sub‑licence, the Sub‑licensee shall:

#### treat all Confidential Information as secret and confidential;

#### 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);

#### not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

#### not transfer any of the Confidential Information outside the United Kingdom;

#### not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub‑licence;

#### 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

#### upon the expiry or termination of the Sub‑licence:

##### destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

##### ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub‑licensee) from any computer, word processor, voicemail system or any other device; and

##### make no further use of any Confidential Information.

## Permitted Disclosures

### The Sub‑licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

#### reasonably need to receive the Confidential Information in connection with the Sub‑licence; and

#### have been informed by the Sub‑licensee of the confidential nature of the Confidential Information; and

#### have agreed to terms similar to those in this Agreement.

### The Sub‑licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub‑licensee.

### Before making a disclosure pursuant to Clause 3.2, the Sub‑licensee shall, if the circumstances permit:

#### 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

#### ask the court or other public body to treat the Confidential Information as confidential.

## General

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

### This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

#### to grant the Sub‑licensee any licence or rights other than as may be expressly stated in the Sub‑licence;

#### to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

#### as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub‑licence.

### 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.

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

### The maximum liability of the Sub‑licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

### 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.

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

### 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.

## Notices

### 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.

### Any Notice:

#### if to be given to the Supplier shall be sent to:

[*Address*]

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

if to be given to the Sub‑licensee shall be sent to:

[*Name of Organisation*]

[*Address*]

Attention: [ ]

## Governing law

### 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.

### 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 Sub‑licensee*]**

|  |  |
| --- | --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |
| Name: | Position: |

# SCHEDULE 6.1

IMPLEMENTATION

IMPLEMENTATION

## DEFINITIONS

### In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Detailed Implementation Plan",** | means the plan prepared in accordance with paragraph 3.2 of this Schedule 6.1 (*Implementation*); |
| **"Implementation Plan",** | the Outline Implementation Plan and the Detailed Implementation Plan as described in this Schedule 6.1 (*Implementation*); |
| **"Implementation Services Commencement Date"** | Mean 05/08/2019; |
| **"Operational Board"** | has the meaning given to it in Schedule 8.1 (*Governance*); |
| **"Outline Implementation Plan"** | means the plan in the form set out at Annex 1 of this Schedule 6.1 (*Implementation*); |
| **"Supplier Implementation Team"** | has the meaning given to it at paragraph 5.1(a) of this Schedule 6.1 (*Implementation*); |
| **"Supplier's Implementation Manager"** | has the meaning given to it at paragraph 5.1(b) of this Schedule 6.1 (*Implementation*); |

## INTRODUCTION

### This Schedule:

#### defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan;

#### 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; and

#### sets out the reporting requirements, governance and management of the Implementation Plan.

### The following documents form part of this Schedule:

#### Annex 1: Outline Implementation Plan;

#### Annex 2: Minimum Set of Implementation Components;

#### Annex 33: Responsibilities of the Supplier Implementation Team.

### The Supplier shall:

#### use all reasonable endeavours to minimise the risk of Delay in accordance with Clause 6 and/or to service performance during Implementation, including the provision of additional resources to carry out the Implementation Plan at the Supplier's own cost;

#### comply with its obligations under the Outline Implementation Plan, the Detailed Implementation Plan, and this Schedule 6.1 (*Implementation*), and the Supplier shall be responsible for the costs associated with any failure by the Supplier to comply with such obligations. Any issue arising from the Supplier's performance of its obligations shall be escalated for resolution at the Operational Board.

### The Parties shall agree a Project Work Order in accordance with Schedule 6.3 (*Projects and Ordering*) in respect of any specific activities to be carried out by the Supplier over and above those set out in the Implementation Plan.

## OUTLINE IMPLEMENTATION PLAN

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

### The Outline Implementation Plan is described in Annex 1 and contains a summary of the transition Milestones, Deliverables and due dates.

## APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

### The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date. The Supplier shall ensure that the Detailed Implementation Plan is developed in accordance with the requirements set out in the Outline Implementation Plan.

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

#### incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

#### includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

* + - 1. the completion of any Deliverable;
      2. the completion of any design activity;
      3. the completion of any build activity;
      4. the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Test and Assurance*); and
      5. the completion of any deployment or transition activity;

#### clearly details all the steps required to implement the Milestones to be achieved up to and including the the final Milestone, in conformity with the Authority Requirements;

#### incorporates as a minimum the set of components required to implement the activities of the Implementation Plan as set out in Annex 2 (*Minimum Set of Implementation Components*);

#### clearly outlines the required roles and responsibilities of both Parties, including staffing requirements;

#### is produced using a software tool as specified, or agreed by the Authority;

#### clearly details all the Supplier's dependencies on the Authority in order to complete the activities under the Detailed Implementation Plan;

#### all the Supplier's assumptions in setting out the activities and timescales in the Detailed Implementation Plan; and

#### complies with the requirements of Schedule 11 (*Collaboration*)

### 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:

#### to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

##### details of the Supplier's intended approach to the Detailed Implementation Plan and its development;

##### copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and

##### any other work in progress in relation to the Detailed Implementation Plan; and

#### to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

### Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

#### review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and

#### notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

### If the Authority rejects the draft Detailed Implementation Plan:

#### the Authority shall inform the Supplier in writing of its reasons for its rejection; and

#### 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 20 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.

### 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.

## UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

### Following the approval of the Detailed Implementation Plan by the Authority:

#### The Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier. The Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

#### 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

#### the Supplier’s performance against the Implementation Plan shall be monitored at meetings of the Operational Board (as defined in Schedule 8.1 (*Governance*). In preparation for such meetings, the Supplier shall provide to the Authority not less than 5 Working Days in advance of each meeting of the Operational Board:

##### the current Detailed Implementation Plan; and

##### any reports as specified in the Detailed Implementation Plan.

### 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:

#### 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

#### in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).

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

## RESOURCE COMMITMENTS AND CHARGES

### The Supplier shall:

#### coordinate and provide sufficient and appropriately skilled resources to carry out the Supplier's obligations under this Schedule including the responsibilities set out in Annex 3 (*Responsibilities of the Supplier Implementation Team*) ("**Supplier Implementation Team**");

#### appoint an individual Supplier Personnel in accordance with Clause 14 with the responsibility for managing the Supplier's obligations under this Schedule and provide written notification of such appointment to the Authority within 2 weeks of the Effective Date ("**Supplier's** **Implementation Manager**").

### The Supplier's activities for carrying out its obligations set out in this Schedule shall be charged on a fixed costs basis in accordance with the charging model and rate card/s set out at Annex 1 of Schedule 7.1 (*Charges and Invoicing*) and payable as part of the implementation plan provided.

## IMPLEMENTATION OF THE DETAILED IMPLEMENTATION PLAN

### The Supplier shall plan, prepare for and carry out the Implementation activities in accordance with this Schedule, and shall:

#### comply with the Detailed Implementation Plan;

#### deliver as a minimum, the set of components required to implement the activities of the Implementation Plan as set out in Annex 2 (*Minimum Set of Implementation Components*);

#### be responsible for overall management of the activities under the Detailed Implementation Plan in order to ensure the timely completion of each task and Milestone;

#### carry out the Detailed Implementation Plan without causing any disruption to the Authority's business operations unless:

##### the Supplier has procured the Authority's agreement in writing no less than 6 weeks prior to the associated disruption; or

##### if the Supplier is unable to provide 6 weeks’ notice of such disruption to the Authority, the Supplier has notified the Authority as soon as possible upon becoming aware of the disruption and the Authority has agreed to such disruption through the Fast‑Track Change Procedure;

#### 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 from the Authority to the Supplier.

### Readiness Review

#### Supplier shall cooperate with and assist the Authority in carrying out readiness reviews for the Implementation 8 weeks prior to the Operational Service Commencement Date in order to satisfy key Authority stakeholders that the relevant Services can be transferred to the Supplier without impact on business operations ("**Readiness Reviews**").

#### As part of the Readiness Review the Operational Board shall agree a recovery plan to remedy the issues identified by the Readiness Review that have significant impact on business operations.

#### The Parties shall define and agree the conditions which form the basis of the Readiness Review reports within 20 Working Days after the Effective Date.

### Third Parties

#### The Supplier shall cooperate with and provide assistance to the Authority and any relevant third party in order to achieve the transition of Services in accordance with this Schedule and Schedule 11 (*Collaboration*).

### Disputes

#### The Parties shall escalate any Disputes arising from the Implementation Plan to the Operational Board, and the Supplier shall provide to the Authority within 2 Working Days of its request all documentation relevant to the Dispute that is available at that time. Where the Operational Board has been unable to resolve such Dispute, the Parties shall follow the Dispute Resolution Procedure and the Parties agree to use the Expedited Dispute Timetable.

### Reporting

#### The Supplier shall provide to the Authority progress reports on a weekly basis, including an executive dashboard, against the Detailed Implementation Plan, which will set out:

##### the current status of the implementation activities;

##### the Supplier's progress against all Milestones and other activities set out in the Detailed Implementation Plan, any delays to the Detailed Implementation Plan and anticipated remedial activities in respect of such delay;

##### the actual and anticipated delays to the Detailed Implementation Plan as a result of any failure or delay by the Authority as set out in Schedule 3 (*Authority Responsibilities*), the impact of such failures on the Supplier and the associated mitigation actions taken by the Supplier; and

##### the actual and anticipated risks and issues (including the RAID log as set out in Paragraph 6.8(a)(i), the impact or likely impact of such risks and issues on the Detailed Implementation Plan and the associated mitigation actions being taken by the Supplier.

#### The Supplier shall promptly (and in any event, no later than 5 Working Days prior to the relevant governance meeting) provide the Detailed Implementation Plan and all other progress reports required in accordance with the Detailed Implementation Plan and all such other reports as the Authority may reasonably request.

#### The Supplier shall create and maintain a shared document repository, in a form acceptable to the Authority (acting reasonably) that can be accessed by both Parties for the deposit of documentation related to and produced as part of the Detailed Implementation Plan and such other documents as may be agreed with the Authority. A document naming convention, as agreed with the Authority, will be used to ensure version control is used for all documents.

### Security and Safety

#### The Supplier shall carry out its obligations under this Schedule in compliance with all applicable site safety and security procedures of the Authority and the Incumbent Supplier to the Authority (as applicable) and in accordance with the relevant provisions of the Agreement.

### Service Documentation

#### Prior to the Operational Service Commencement Date the Supplier shall provide to the Authority operational and service delivery documentation, including its operations manual, defining how the Supplier will deliver the Services. This documentation shall include a description of all the operational and service management processes, procedures and tools which will be used by the Supplier in delivering the Services.

### Risks, Assumptions, Issues and Dependencies (RAID) Management

#### The Supplier shall:

##### maintain a RAID log which sets out any risks, assumptions, issues and dependencies in carrying out the Detailed Implementation Plan, including risk mitigation strategies, preventive measures and contingency plans for rapid recovery from the occurrence of such risks and issues;

##### identify and promptly report to the Authority upon becoming aware of any risks, assumptions, issues and dependencies in carrying out the Detailed Implementation Plan;

##### create and maintain (based upon consultation with and engagement of the Authority) a RAID management plan which will clearly list all technical, commercial, delivery, financial and legal risks, assumptions, issues and dependencies that impact the Parties and the Detailed Implementation Plan. The RAID management plan shall be created by the Supplier within 1 month of the Effective Date and provided to the Authority fortnightly; and

##### develop contingency plans for each identified risk and any risks that are categorised as 'High Impact and High Likelihood'. Such contingency plans shall be developed within 20 Working Days of being categorised and reported as 'High Impact and High Likelihood' risks and shall be provided to the Authority upon request.

## ACHIEVEMENT OF MILESTONES

### The Supplier's achievement of the Milestones set out in the Detailed Implementation Plan shall be assessed in accordance with Schedule 6.2 (*Test and Assurance*).

## GOVERNMENT REVIEWS

8.1 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 1: OUTLINE IMPLEMENTATION PLAN

*Redacted*

# ANNEX 2: Minimum set of Implementation COMPONENTS

| Implementation component | Description |
| --- | --- |
| Implementation management | To set up and manage the Implementation Phase of the Supplier, based on industry standard good practice project and programme management frameworks. |
| Data management | To perform the detailed data discovery of Service(s) and to manage and maintain the data from service transfer. |
| Governance | To implement governance for the Detailed Implementation Plan (for instance, the organisational forums) as detailed in Schedule 8.1 (*Governance*) and Schedule 6.1 (*Implementation*), to enable the management of the relationship between the Supplier and the Authority from Contract Start. |
| Communication | To plan, prepare and implement an effective communication approach from Implementation Services Commencement Date, as jointly agreed by the Supplier and the Authority. |
| Staff transfer | To carry out the staff consultation and engagement to effect the smooth transition and integration of In Scope Roles/Staff from Incumbent Supplier to the Supplier, as specified in Schedule 9.1 (*Staff Transfer*). |
| Pay, pension and benefits | To plan, prepare and implement the solutions for payroll, pensions and staff benefits. |
| Workforce management | To manage overall transferring and required workforce resourcing including: attrition, vacant roles, recruitment, backfill for key personnel, contract staff and grade mapping. |
| Knowledge transfer | To transfer the knowledge from the Incumbent Supplier to the Supplier for the transferred Service(s). |
| Induction and training | To provide induction information to the transferring staff relating to the Supplier. To deliver appropriate training for staff where needed for service provision under the Supplier’s operating model. |
| Third Party Contracts | As specified in Schedule 4.4 (*Third Party Contracts*), and Schedule 5 (*IPR*), to novate service contracts, and to obtain the right to use for all identified in‑scope 3rd party software licences. |
| In-Flight Projects | To assess and transfer In Flight Projects to the Supplier as appropriate. To implement the project management processes and tools to support the delivery of any new projects for the Authority after the transfer of Service(s). |
| Demand management | To develop processes and tools that enable the Supplier to manage all service requests. |
| Post Contract Verification | To undertake the detailed discovery to validate assumptions in the contractual documentation and to prepare a final report to agree and approve all Changes prior to the defined period specified in the Agreement. |
| Asset validation | To validate and make accurate the list of in‑scope assets for which management responsibility is to be transferred from the Authority and Incumbent Supplier to the Supplier, in accordance with Schedule 4.5 (*Assets*). |
| Operating model and service design | To design and deliver the operating model for service provision including (as a minimum): process, organisation, location, data, applications, tooling, technology and commercials. |
| Finance | To set up all the processes defined in the Agreement, Schedule 7.1 (*Charges and Invoicing*) and Schedule 7.5 (*Financial Reports, Financial Model and Audit Rights*) that the Supplier and the Authority shall use to provide financial information, ensuring the accurate and timely billing and payment for the Service(s). |
| Contract management | To implement processes and procedures to effectively manage the contract from the Operational Services Commencement Date, and handle queries, issues and Changes as they arise during the Term. |
| Asset management | To take responsibility for the Incumbent Supplier's asset management solution and continue to operate it. |
| Reporting | Ensure the continued production of reports as specified in Schedule 6.1 (*Implementation*) and Schedule 8.2 (*Reports and Records*) in order to support Governance and operations. |
| Service continuity management | To perform gap analysis and report, agree and align the changes necessary to ensure no disruption to service throughout the transfer of Service(s). |
| Quality management | To provide assurance to the Supplier and the Authority that the Supplier’s Deliverables are complete, have met their quality criteria and the agreed processes have been observed. |
| Security management | To report, agree and align the activities necessary to ensure system security is maintained or enhanced during Implementation, as specified in Schedule 2.4 (*Security Management*). |
| User account provisioning | To set up infrastructure and user accounts including access rights to tools and applications needed for each role. |
| Test and Assurance | To provide evidence that the Supplier Solution as designed and developed is suitable for the delivery of the Service(s) and meets the Authority requirements. |
| Implementation readiness | To assess the state of Supplier readiness for a successful transfer and ongoing end to end provision of Service(s). |
| Cutover and Day 1 Experience | Over the weeks prior to the transfer of Service(s), to plan and prepare for a smooth transfer of the Service(s) from the Incumbent Supplier to the Supplier. On day of transfer of Service(s), to implement the cutover plan and transfer the Service(s) to the Supplier. |
| Post Implementation aftercare | To plan and implement support arrangements for the period following transfer of Service(s). To resolve issues arising from the transfer of Service(s). |

ANNEX3: RESPONSIBILITIES OF THE SUPPLIER IMPLEMENTATION TEAM

ANNEX 3: RESPONSIBILITIES OF THE SUPPLIER IMPLEMENTATION TEAM

The Supplier’s Implementation Team shall be responsible for:

#### execution of the agreed Detailed Implementation Plan and associated activities and deliverables;

#### management of the Detailed Implementation Plan and resources and activities pertaining to planning, management and control;

#### communicating with and reporting to the Authority in accordance with the Detailed Implementation Plan;

#### monitoring, reporting and managing risks as set out in this Schedule;

#### ensuring compliance with the Supplier's obligations under this Agreement; and

#### planning and conducting the Readiness Reviews.

# SCHEDULE 6.2

TEST AND ASSURANCE

Test and Assurance

# DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Component”** | any constituent parts of the infrastructure for a Service, hardware or Software; |
| **“Documentary Deliverable”** | means any Deliverable that is in the form of a written document; |
| **"E2E Test Provider"** | has the meaning set out in Paragraph 10.6; |
| **“Material Test Issue”** | a Test Issue of Severity Level 1 or Severity Level 2; |
| **“Product Description”** | means an outline of the contents of a Documentary Deliverable in accordance with PRINCE2; |
| **“Severity Level”** | the level of severity of a Test Issue, the criteria for which are described in Annex 1; |
| **“Test Certificate”** | a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Exit Criteria; |
| **“Test Completion Review”** | a meeting between the Parties to review the Test CompletionReport and to confirm that the Test Exit Criteria have been met; |
| **“Test Completion Reports”** | the reports to be produced by the Supplier setting out a summary of the results of the Tests as defined in the Test Plan; |
| **“Test Design”** | the specification that sets out how Tests will demonstrate that the Test Exit Criteria have been satisfied, as described in more detail in Paragraph 9; |
| **“Test Entry Criteria”** | the criteria that must be met before a Deliverable can be submitted for Testing; |
| **“Test Exit Criteria”** | in relation to a Test, the test exit criteria for that Test as referred to in Paragraph 8.5; |
| **“Test Issue”** | any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Exit Criteria); |
| **“Test Issue Threshold”** | in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan; |
| **“Test Issue Management Log”** | a log for the recording of Test Issues as described further in Paragraph 12.1; |
| **“Test Plan”** | a plan:   1. for the Testing of Deliverables; and 2. setting out other agreed criteria related to the achievement of Milestones,   as described further in Paragraph 8; |
| **“Testing Procedures”** | the applicable testing procedures and Test Exit Criteria set out in this Schedule; |
| **“Test Strategy”** | the Supplier's strategy for the conduct of Testing under this Agreement as described further in Paragraph 7; |
| **“Test Witness”** | any person appointed by the Authority pursuant to Paragraph 13.1. |

# INTRODUCTION

## This Schedule sets out:

##### for Documentary Deliverables, the procedure for obtaining the Authority's approval of Documentary Deliverables (as set out in Part A of this Schedule);

##### the components of the Test Strategy, Test Plans and Test Designs (as set out in Part B of this Schedule);

##### the process for Testing and the issuing by the Authority of Test Certificates (as set out in Part C of this Schedule); and

##### in respect of a Milestone set out in Annex 1 to Schedule 6.1 (*Implementation*), the process for the issuing by the Authority of Milestone Achievement Certificates (as set out in Part D of this Schedule).

# GENERAL

## This Schedule shall apply to all Deliverables provided by the Supplier to the Authority under this Agreement, including any Deliverables set out in a Change Authorisation Note.

## The Supplier shall ensure that any Deliverable provided pursuant to a Change Authorisation Note will not prejudice the effectiveness, operational integrity and/or security of the Services.

## For Parts B and C of this Schedule, the Authority's obligations in relation to the Testing Procedures and Deliverables shall be carried out by the Authority’s CDIO IT Delivery Project Manager (unless otherwise notified by the Authority).

# PART A: AUTHORITY APPROVAL OF DOCUMENTARY DELIVERABLES

# PRODUCT DESCRIPTIONS

## This Paragraph 4 shall only apply where Product Descriptions are required by the Authority under this Agreement.

## The Supplier shall provide to the Authority a draft Product Description for a Documentary Deliverable prior to the due date for that Documentary Deliverable.

## The Product Description shall include:

##### the purpose of the Documentary Deliverable;

##### the structure and format of the Documentary Deliverable;

##### an outline of the contents of the Documentary Deliverable, including any criteria notified by the Authority to the Supplier.

## The Parties shall agree the Product Description no later than two (2) months prior to the due date of that Documentary Deliverable, unless otherwise agreed by the Authority.

## The Supplier shall incorporate any changes to the Product Description that are reasonably required by the Authority and shall prepare the Documentary Deliverable in accordance with the agreed Product Description.

# DOCUMENTARY DELIVERABLES

## The Supplier shall set out all Documentary Deliverables and corresponding Product Descriptions in the Test Plan or the Detailed Implementatio] Plan as defined in Schedule 6.1 (*Implementation*) (as applicable).

## The Supplier shall submit the Documentary Deliverable for review by the Authority in accordance with the timeline set out in the Test Plan or the Detailed Implementation Plan (as applicable).

## The Authority shall notify the Supplier in writing within ten (10) Working Days of receipt if it:

##### approves the relevant Documentary Deliverable; or

##### rejects the relevant Documentary Deliverable in accordance with Paragraph 5.4.

## If the Authority rejects the Documentary Deliverable:

##### the Authority shall notify the Supplier in writing of its reasons for such rejection; and

##### the Supplier shall revise the Documentary Deliverable to respond to and/or incorporate the Authority's comments and shall re-submit the revised Documentary Deliverable to the Authority for further review within ten (10) Working Days of the date of notice of rejection.

## The Supplier shall notify the Authority immediately if it is unable to submit a Documentary Deliverable by the date specified in the Test Plan or the Detailed Implementation Plan (as applicable). For the avoidance of doubt, such notification shall not waive the Supplier's obligations under this Agreement.

## If the Authority is unable to approve a Documentary Deliverable by the date specified in the Detailed Implementation Plan due to the Supplier's failure to comply with the Authority's requirements as set out in the Product Description, the Authority shall notify the Supplier of such delay and without prejudice to the Authority's other rights and remedies, such delay shall constitute a Notifiable Default for the purposes of Clause 27 (*Rectification Plan Process*).

## The Supplier shall not submit any Documentary Deliverable for the Authority's review unless the Supplier is reasonably confident that it will satisfy the Authority's requirements as set out in the Product Description agreed between the Parties in accordance with Paragraph 4.4.

# PART B: SUPPLIER'S TEST DOCUMENTATION

# INTRODUCTION

## The Supplier's Test Strategy, Test Plans, and Test Designs are Documentary Deliverables and shall be approved in accordance with Part A of this Schedule.

# TEST STRATEGY

## The Supplier shall develop the Test Strategy and submit it for the approval of the Authority no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

## The Test Strategy shall include as a minimum:

##### an overview of the Testing to be conducted in accordance with the Detailed Implementation Plan and includes the Test scope, objectives, assumptions, principles, governance and controls;

##### the definition of all test activities including planning, preparation, design, execution and closure stages;

##### a summary of the Testing lifecycle which will define the different Test stages;

##### the generic Test Entry Criteria and Test Exit Criteria;

##### the approach to Test data;

##### the Test Issue management process;

##### the Supplier's dependencies on third parties and on the Authority;

##### the process to be used to capture and record Test results and the categorisation of Test Issues;

##### the method for mapping the expected Test results to the Test Exit Criteria;

##### the procedure to be followed if a Deliverable fails to satisfy the Test Exit Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;

##### the procedure to be followed to sign off each Test;

##### the process for the production of Test CompletionReports and a summary of how test information will be communicated to the Authority;

##### the Industry Standards on which the Supplier’s test products and processes are based;

##### the legal and regulatory constraints relevant to the testing;

##### the test environments;

##### the strategy for Security testing;

##### the test compatibility with Particular Needs software used to meet the needs of users with accessibility and assistive requirements;

##### how customers and stakeholders will be involved in testing;

##### the names and contact details of the Supplier's Test representatives; and

##### a high level identification of the resources required for Testing, including Authority and/or third party involvement in the conduct of the Tests.

## The Supplier shall comply with the HMRC Test Principles as described in the HMRC Organisational Test Strategy set out in Annex  4 (or as updated by the Authority from time to time and notified to the Supplier) when developing the Test Plan.

## The Supplier shall, throughout the Term review, maintain, and update the Test Strategy, at least once a quarter.

# TEST PLANS

## The Supplier shall develop Test Plans and submit these for the approval of the Authority no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing.

## Each Test Plan shall include as a minimum:

##### the relevant purpose and scope of the Test, the Milestone to which it relates, the requirements being tested, the approach to be undertaken, and, for each Test, the specific Test Entry Criteria and Test Exit Criteria to be satisfied, the requirements in relation to the environment, tools to support testing, risks that may occur, approach to communications and stakeholder engagement;

##### a detailed procedure for the Tests to be carried out, including:

###### the timetable for the Tests, including start and end dates;

###### the Testing mechanism;

###### dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Exit Criteria have been met;

###### the mechanism for ensuring the quality, completeness and relevance of the Tests;

###### the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

###### the process which the Authority will use to review Test Issues and the Supplier’s process in resolving these in a timely basis;

###### the Test Gantt chart; and

###### the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

##### the process for escalating Test Issues from a re-Test situation to the taking of specific remedial action to resolve the Test Issue.

## The Supplier shall comply with the HMRC Test Principles as described in the current HMRC Organisational Test Strategy and set out in Annex  4 when developing the Test Plans.

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

## The Test Exit Criteria for:

##### each Test that must be Achieved for the Supplier to Achieve the Milestones are set out in Annex 1 to Schedule 6.1 (*Implementation*) shall be as set out in the Detailed Implementation Plan; and

##### all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 8.

# TEST DESIGN

## Following approval of a Test Plan, the Supplier shall develop the Test Design for the relevant Deliverables and submit the Test Design for the approval of the Authority at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing.

## Each Test Design shall include as a minimum:

##### a description of the test conditions;

##### the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;

##### a plan to make the resources available for Testing;

##### Test scripts/cases;

##### Test pre-requisites and the mechanism for measuring them; and

##### expected Test results, including:

###### a mechanism to be used to capture and record Test results; and

###### a method to process the Test results to establish their content.

# PART C: TESTING PROCEDURES

# TESTING OVERVIEW

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

## The Supplier shall not submit any Deliverable for Testing:

##### unless the Supplier is reasonably confident that it will satisfy the relevant Test Exit Criteria;

##### until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s) (unless otherwise agreed by the Parties); and

##### until the Parties have agreed the Test Plan and the Test Design relating to the relevant Deliverable(s).

## The Supplier shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Test Plan or the Detailed Implementation Plan (as applicable) for the commencement of Testing in respect of the relevant Deliverable.

## Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test CompletionReports and the Test Issue Management Log.

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

## The Supplier shall cooperate with and provide assistance to the Authority's third party test provider which carries out end to end test management and system integration on behalf of the Authority ("**E2E Test Provider**") in accordance with this Agreement and Annex 5.

# TESTING

## The Supplier shall manage the Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Design. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 13.

## The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Test.

## The Supplier shall provide to the Authority and, at the Authority's request, any third party, with all reasonable assistance and information necessary for conducting the Tests.

## The Authority may raise and close Test Issues during the Test witnessing process.

## The Supplier shall provide to the Authority in relation to each Test the final Test CompletionReport within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

## Each Test CompletionReport shall provide a report on the Testing conducted in respect of the relevant Deliverables, including as a minimum:

##### an overview of the Testing conducted;

##### a summary of the Test results, including all Test Issue reports;

##### identification of the relevant Test Exit Criteria that have been satisfied;

##### identification of the relevant Test Exit Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

##### the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

##### the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing; and

##### analysis of result information to allow management decisions, based upon risk, on whether to proceed to the next stage.

## The Supplier shall hold Test Completion Reviews to demonstrate to the Authority that the Test Exit Criteria have been successfully completed and met.

# TEST ISSUES

## Where a Test CompletionReport identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

## The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.

## The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

# TEST WITNESSING

## The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

## The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

## The Test Witnesses:

##### shall review the Test documentation;

##### shall attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

##### shall not be involved in the execution of any Test;

##### shall be required to verify that the Supplier conducted the Tests in accordance with the Test Exit Criteria and the relevant Test Plan and Test Design;

##### may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;

##### may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

##### may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

# TEST COMPLIANCE REVIEW

## Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going compliance/quality audits in respect of any part of the Testing (each a “**Test Compliance Review**”) subject to the provisions set out in the agreed Quality Plan.

## The focus of the Test Compliance Reviews shall be on:

##### adherence to an agreed methodology;

##### adherence to the agreed Testing process;

##### adherence to the Quality Plan;

##### review of status and key development issues; and

##### identification of key risk areas.

## The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Test Compliance Review can be provided.

## The Authority will give the Supplier at least 5 Working Days' written notice of the Authority’s intention to undertake a Test Compliance Review and the Supplier may request, following receipt of that notice, that any Test Compliance Review be delayed by a reasonable time period if in the Supplier’s reasonable opinion, the carrying out of a Test Compliance Review at the time specified by the Authority will materially and adversely impact the Test Plan or Detailed Implementation Plan (as applicable).

## A Test Compliance Review may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Test Compliance Review shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Test Compliance Review.

## If the Test Compliance Review gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:

##### discuss the outcome of the Test Compliance Review with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

##### subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority’s report.

## In the event of an inadequate response to the Authority’s report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and, where applicable, consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

# OUTCOME OF TESTING

## The Authority shall issue a Test Certificate when the Deliverables satisfy all applicable Test Exit Criteria in respect of that Test.

## The Authority shall notify the Supplier of a Test failure if the Authority deems the Deliverables (or any relevant part) do not satisfy all applicable Test Exit Criteria and:

##### the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;

##### where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

##### where the failure to satisfy the Test Exit Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority’s other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process).*

## The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Exit Criteria for that Deliverable to be satisfied.

PART D: PROCEDURES FOR MILESTONE ACHIEVEMENT CERTIFICATE

# ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

## The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

##### the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

##### performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Detailed Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentary Deliverables or other Documentation).

## The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

## If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

##### the applicable Test Issues; and

##### any other reasons for the relevant Milestone not being Achieved.

## If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.

## If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority’s other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process)*.

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

##### any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority’s report pursuant to Paragraph 16.3); and

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

# RISK

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

##### 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

##### affect the Authority's right subsequently to reject:

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

###### any Milestone to which the Milestone Achievement Certificate relates.

## 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:

##### the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements; and

##### the Services are implemented in accordance with this Agreement.

# ANNEX 1: TEST ISSUES – SEVERITY LEVELS

## Severity Level 1 Test Issue: a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

## Severity Level 2 Test Issue: a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:

##### causes a Component to become unusable;

##### causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

##### has an adverse impact on any other Component(s) or any other area of the Services.

## Severity Level 3 Test Issue: a Test Issue which:

##### causes a Component to become unusable;

##### causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

##### has an impact on any other Component(s) or any other area of the Services;

##### but for which, as reasonably determined by the Authority, there is a practicable workaround available.

## Severity Level 4 Test Issue: a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services.

## Severity Level 5 Test Issue: a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

# ANNEX 2: TEST CERTIFICATE

To: [***NAME OF SUPPLIER***]

FROM: [***NAME OF AUTHORITY***]

[***Date***]

Dear Sirs,

**TEST CERTIFICATE**

Deliverables: [***insert description of Deliverables***]

We refer to the agreement (the **“Agreement”**) 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*) or Schedule 6.2 ([*Test and Assurance]*) of the Agreement.

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

**OR**

[This Test Certificate is issued pursuant to Paragraph 15.1 of Schedule 6.2 ([*Test and Assurance])* of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]\*

\**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

acting on behalf of [***name of*** ***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 **“Agreement”**) 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*) or Schedule 6.2 ([*Test and Assurance]*) of the Agreement.

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

**OR**

[This Milestone Achievement Certificate is granted pursuant to Paragraph 16.1 of Schedule 6.2 (*Test and Assurance*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]\*

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

\**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

acting on behalf of ***[Authority***]

# ANNEX 4: HMRC’S TEST PRINCIPLES FROM HMRC ORGANISATIONAL TEST STRATEGY DOCUMENT VERSION 1.0 DATED 16 FEBRUARY 2016

|  |  |
| --- | --- |
| **Ref** | **Test Principle (TP)** |
| TP1 | **Agile By Default** - HMRC will use Agile techniques as the preferred delivery approach and take on board GDSM concepts of building quality in, everyone is responsible for quality, fast feedback, tests are an asset of the product, faster delivery into production, clear and consistent view of testing and optimise value.  It is recognised that waterfall methodology may be the approved Test Approach in some instances. |
| TP2 | **Early engagement of testing** - testing representatives need early sight of IT change to ensure they are properly assessed for testing requirements in terms of scope, timescales and budget, as well as for ensuring clear and unambiguous acceptance criteria. |
| TP3 | **Test early** - run Test Driven Development (TDD), Behaviour Driven Development (BDD) and Acceptance Test Driven Development (ATDD) techniques as early as possible in the testing lifecycle to mitigate risk in the later stages of testing. |
| TP4 | **Allow sufficient time for testing** - give due consideration to the risks associated with a test, ensuring sufficient iterations/cycles are planned and that there is time for defect detection, defect resolution and retest. |
| TP5 | **Risk Based Testing** - focus testing on the highest risk areas according to a documented testing risk assessment. Predictive testing will support the Risk Based Testing approach through historical project data relating to defect trends. |
| TP6 | **Defect Prevention** - HMRC expect the test process to evolve and improve through post implementation analysis, root cause analysis and test process improvement. By doing this, improved defect prevention can be achieved. |
| TP7 | **Test Automation** - automate as much as possible. Automated testing will be at the forefront of our drive to make substantial cost savings by implementing an automation first policy. |
| TP8 | **Test Stage containment** - fix defects within iteration/ test stage where they are detected wherever possible rather than defer the risk until a later iteration/test stage. |
| TP9 | **Test Entry Reviews & Test Exit Reviews & Agile equivalent** - all tests under the control of a formal test plan must be subjected to a test entry review to ensure the entry criteria have been met i.e. testing starts when the entry criteria have been met so if the scheduled start date is missed, management action is needed to maintain the test schedule or slippage will occur; all tests must be subjected to a test exit review to ensure that the exit criteria have been met and the test can be formally declared as complete. |
| TP10 | **Suspension & resumption of testing** - under circumstances set out in a test plan, testing may be suspended and then later resumed; such actions will be recorded and may result in project risks and/or issues being raised, depending on the nature of the interruption to testing. |
| TP11 | **Test Completion** - every test will have an associated test completion condition to formally close the test activity. For Waterfall this will be through the Test Completion Report. |
| TP12 | **Re-testing and Regression testing** - when defects are fixed they will be subjected to re-test to confirm that the fix is effective; consideration must also be given to the need to administer regression tests, based on the balance of risk for the underlying changes made for the fix and any other changes made in the release. |
| TP13 | **Consider the timing of non-functional testing** - non-functional testing can be expensive so there is a need to avoid retesting due to functional changes wherever possible and practicable to do so. |
| TP14 | **Re-use of test artefacts** - to maintain value in testing the management of test assets for re-use is key. |
| TP15 | **User Centred Testing** -HMRC puts the user at the forefront of all products it delivers. User testing must be integrated into the Test Lifecycle to ensure that the system satisfies the needs of the customer as specified in the business and functional requirements (for Agile User Stories and Epics) and provides confidence in its use. |
| TP16 | **Defect Management Process** - incidents that occur during any testing process need to be managed properly. It is expected that robust Defect Management Procedures will be applied during test execution. |
| TP17 | **Test Environments/Virtualisation** - HMRC expect appropriate test environments to be available in a timely fashion to allow near live like testing to be completed. HMRC has a drive towards Virtualised Environments but recognises other environments may be used in the interim. |
| TP18 | **Use of test management tools** - all categories of test tools will be considered for use by each project/service team. |
| TP19 | **Testing must be measurable** – this ensures the value of testing can be established in terms of time, cost and quality. |
| TP20 | **Adoption of standards** - wherever possible use existing corporate, national and international standards, as well as tracking emerging standards to ensure on-going use of industry best practice. Any deviation from standards must be justified and documented. |

# ANNEX 5: TEST SERVICE REQUIREMENTS

## The Supplier shall:

##### provide sufficient, appropriate and empowered resource to review and approve the Authority's end to end test strategy ("**E2E Test Strategy**") and/or end to end test plan ("**E2E Test Plan**");

##### confirm agreement to the Authority's E2E Test Strategy and/or E2E Test Plan in accordance with the timelines stipulated by the E2E Test Provider;

##### provide to the E2E Test Provider the Supplier's Test Strategy and Test Plan (based on the E2E Test Strategy and/or Plan) detailing the testing they will deliver and how it will be executed;

##### provide sufficient, appropriate and empowered resource to input to test workshops and discussions;

##### provide appropriate live service resource to input to decisions in relation to operational acceptance testing (OAT) and system integration testing (SIT) requirements;

##### provide test progress and test completion metrics to the E2E Test Provider's test manager on a weekly basis;

##### supply details of any defects in Testing to the E2E Test Provider and provide sufficient, appropriate and empowered resource to input to the Authority's and the E2E Test Provider's problem review forums, also adhering to the defect management process as defined in the E2E Test Strategy and/or Plan;

##### complete their delivery activities on time and in accordance with the E2E Test Strategy and/or Plan including meeting the exit criteria for system testing;

##### undertake the execution of any operational testing which has been sub-contracted to the Supplier by the Authority;

##### execute performance and volume testing;

##### undertake Component testing, Component integration testing and system testing;

##### provide and maintain the requisite test environments in a timely manner as defined in the E2E Test Strategy and/or Plan;

##### provide test data to be used in SIT; and

##### provide sufficient, appropriate and empowered resource to provide technical

##### support for the resolution of defects during SIT.

# SCHEDULE 7.1

CHARGES AND INVOICING

(Fixed Price Cost Model)

**Charges and Invoicing**

## DEFINITIONS

In this Schedule,the following definitions shall apply:

|  |  |
| --- | --- |
| **“Achieved Profit Margin”** | the cumulative Supplier Profit Margin calculated from (and including) the first day of each Contract Year to (and including) the last day of the previous Contract Year; |
| **“Anticipated Contract Life Profit Margin”** | the anticipated Supplier Profit Margin in each Contract Year as reflected in the Financial Model; |
| **Authority Gain Share Amount** | means the Authority’s share of the Earned Gain calculated in accordance with Paragraph 3 of Part D of Schedule 7.1 (Chares and Invoicing); |
| **“Costs”** | the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:   1. the cost to the Supplier or the Key Sub‑contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:    * 1. base salary paid to the Supplier Personnel;      2. employer’s national insurance contributions;      3. pension contributions;      4. car allowances;      5. any other contractual employment benefits;      6. staff training;      7. work place accommodation;      8. work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and      9. reasonable recruitment costs, as agreed with the Authority; 2. costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to UKGAAP, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets. In both cases limited to the charges to the profit and loss account (such as depreciation or amortisation) according to generally accepted accounting principles within the UK; 3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services; 4. Reimbursable Expenses to the extent these are properly incurred in delivering the Services in accordance with Paragraph 3 of Part A of Schedule 7.1 (Charges and Invoicing) but excluding: 5. Overhead; 6. financing or similar costs; 7. maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise; 8. taxation; 9. fines and penalties; 10. amounts payable as Service Credits and Delay Payments and payable to the Authority under part D of Schedule 7.1 (Charges and Invoicing); 11. amounts payable under Schedule 7.3 (*Value For Money*); and 12. non‑cash items (including depreciation, amortisation, impairments and movements in provisions); |
| **“Delay Payment Rate”** | has the meaning given in Paragraph 1.1(a) of Part C; |
| **“Earned Gain”** | means the Supplier Profit over the Anticipated Annual Profit Margin; |
| **Financial Reconciliation** | means the reconciliation of the Achieved Supplier Profit Margin against the Anticipated Supplier Profit Margin in each Contract Year; |
| **“Forecast Contingency Costs”** | the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies set out in their Financial Model; |
| **Gain Share Calculation** | means the calculation prepared from time to time in accordance with Part D of Schedule 7.1 (Charges and Invoicing); |
| **“Man Day”** | 8 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; |
| **“Man 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; |
| **“Maximum Permitted Profit Margin”** | the Anticipated Annual Profit Margin plus 5%; |
| **“Milestone Retention”** | has the meaning given in Paragraph 1.3 of Part B; |
| **“Overhead”** | those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub‑contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”; |
| **“Reimbursable Expenses”** | 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:   * + 1. 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     2. 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 Profit”** | in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal terms but excluding any Deductions) and total Costs (in nominal terms) for the relevant period or in relation to the relevant Milestone; |
| **“Supplier Profit Margin”** | in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; |
| **Supplier Gain Share Amount** | means the Supplier’s share of the Earned Gain calculated in accordance with Part D of Schedule 7.1 (Charges and Invoicing); |
| **“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; |

# PART A: Pricing

## INTRODUCTION

### This Schedule 7.1 (*Charges and Invoicing*) is to set out the provisions relating to:

#### Milestone Payments;

#### Service Charges;

#### expenses and capital assets;

#### adjustments to the Charges, including Service Credits, Delay Payments and payments for Delays due to Authority Cause;

#### changes to the Charges;

#### Charges for the provision of Termination Services;

#### invoicing and payment terms; and

(h) license charges

## FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

## **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 Annex 1.**

## CAPITAL ASSETS

## **If the Supplier procures on behalf of the Authority any capital assets from third parties on a pass**‑**through basis, the Supplier shall not be entitled to apply any margin to the costs charged by such third parties to the Supplier in its pass**‑**through charge to the Authority.**

# PART B: Charging Mechanisms

## MILESTONE PAYMENTS

### Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.

### Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate and the relevant Supporting Documentation.

### The “**Milestone Retention**” for each Milestone shall be (*Redacted)* of the Charges for that Milestone and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

**Release of Milestone Retentions**

### On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in the *“CPP Milestone Charge Number”* column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 2 of Schedule 6.2 (*Test and Assurance*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

## SERVICE CHARGES

### 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.

### If the relevant Service commences on a day other than the first day of a month; and/or 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.

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

### Any Service Credits that accrue during a Service Period shall be calculated in the next following Service Period and shall be deducted from the Services Charges in such next Service Period. For the avoidance of doubt, by way of a worked example, in respect of the Services performed in Service Period 1, the total number of Service Points accumulated in Service Period 1 shall be calculated during Service Period 2 and the resulting Service Credits shall be deducted from the invoice relating to Service Period 2. Where any Service Credits would have otherwise been due in the final Service Period, the Supplier shall issue a credit note to the Authority in the month following the final Service Period and make payment to the Authority to the value of such credit note within 10 Working Days of issue of the credit note. 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.

## CHARGES FOR TRANSITION

### n/a

## License charges

### Each Service to which a license 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.

### If the relevant service commences on a day other than the first day of a month; and/or 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.

### license charges shall be invoiced by the Supplier quarterly in advance in accordance with the requirements of Part E.

## CHARGES FOR TERMINATION SERVICES

### The Parties shall, as part of an Exit Plan, agree the milestone achievement criteria against which such costs shall be payable.

## Exit Milestone Payments

### The Supplier shall be entitled to invoice the Authority for the payments relating to milestone in respect of Termination Services ("**Exit Milestone**") Payment associated with that Exit Milestone less the applicable Exit Milestone Retention in accordance with this paragraph 5.

### Each invoice relating to an Exit Milestone payment shall be supported by:

#### a Milestone Achievement Certificate; and

#### where the Exit Milestone Payment is to be calculated by reference to a Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

### The “**Exit** **Milestone Retention**” for each Exit Milestone shall be 0% of the Charges for that Milestone.

### No earlier than [90] days following Achievement of the last Exit Milestone, the Supplier shall be entitled to invoice the Authority for an amount equal to all Exit Milestone Retentions that relate to Exit Milestones which have not been paid previously.

## OPTIONAL SERVICES

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

#### the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and

#### the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

# PART C: Adjustments to the Charges and Risk Register

## DELAY PAYMENTS

### If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:

#### at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;

#### from (but excluding) the relevant Milestone Date to (and including) the earlier of:

##### the date on which the Key Milestone is Achieved; and

##### the expiry of the Delay Deduction Period(which for the avoidance of doubt shall be 30 (thirty) calendar days from the relevant Milestone Date); and

#### on a daily basis, with any part day’s Delay counting as a day.

### Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

#### where the Supplier has given the Authority less than three (3) months’ prior notice of the Delay, the amount set out in column 3 of Table 1 of Annex 2 for the Key Milestone;

#### where the Supplier has given the Authority between three (3) months’ and 6 months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or

#### where the Supplier has given the Authority more than six (6) months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Annex 2 for the Key Milestone.

### Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within five (5) Working Days of the date the notice is served:

#### pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:

##### in the case of a notice served pursuant to Paragraph 1.2(b), 5 days of Delay Payments; or

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

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

#### issue a credit note to the Authority in respect of the relevant amount.

Failure to make payment within ten (10) Working Days of the Supplier’s notice shall invalidate the notice.

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

#### does not occur; or

#### does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.

### The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates:

#### in each case a genuine pre‑estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date; and

#### do not impose a detriment on the Supplier out of all proportion to the legitimate interests of the Authority.

### Delay Payment Rates are stated exclusive of VAT.

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

#### issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and

#### pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

## PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE AND COLLABORATION FAILURE

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

#### the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:

##### can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

##### is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31 (*Authority Cause*)

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

#### the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;

#### the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Annex 1; and

#### where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

### The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

## SERVICE CREDITS

*Redacted*

## CHANGES TO CHARGES

### Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.3 (*Change Control Procedure*) and on the basis that:

#### the Supplier Profit 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); and

##### in no event exceed the Maximum Permitted Profit Margin.

#### such Changes to the Charges shall be calculated in accordance with the underlying principles in the Financial Model which make up the charges prior to the Change.

### The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

4.3 For the avoidance of doubt, the Supplier may not vary Charges to take account of Indexation at any time.

## RISK REGISTER

The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

## CHARGING MODEL

### The Supplier shall comply with its obligations with respect to Financial Management set out in Schedule 7.5 (*Financial Reports and Audit Rights*).

### The Supplier shall on written demand indemnify the Authority, and keep the Authority indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Authority arising from a breach by the Supplier of its Financial Management obligations set out in Schedule 7.5 (*Financial Reports and Audit Rights*) including without limitation any Losses which may arise as a consequence of any erroneous payments made by the Authority following instructions received by the Supplier.

# PART E: Invoicing and Payment Terms

## SUPPLIER INVOICES

### The Supplier agrees and acknowledges that it shall not raise an invoice without having procured a purchase order number in accordance with Clause 10.2 of this Agreement and that discrete purchase order numbers shall be used in respect of each Service.

### The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within ten (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. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.

### The Supplier shall ensure that each invoice contains the following information:

#### the date of the invoice;

#### a unique invoice number;

#### the Service Period or other period(s) to which the relevant Charge(s) relate;

#### the correct reference for this Agreement;

#### the reference number of the purchase order to which it relates;

#### the dates between which the Services that are the subject of each of the Charges detailed on the invoice were performed;

#### a description of the Services;

#### the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc);

#### any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;

#### 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 Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;

#### details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;

#### 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 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);

#### a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;

#### 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);

#### For Service Charges charged on a Fixed Price Mechanism, the invoice shall contain the “top line” detail of the relevant Service; and

#### for Service Charges charged on a consumption basis, the Supplier shall use the measurement period from the 16th of the preceding Service Period to the 15th of the Service Period to which the invoice relates.

### 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, in a timely fashion. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

### 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.

### The Supplier shall submit all invoices and Supporting Documentation to:

***HMRC Accounts Payable,***

***B Spur***

***South Block***

***Worthing***

***West Sussex***

***BN12 4XH;***

***and***

*Redacted*

with a copy (again including any Supporting Documentation) in .PDF format to [payments.team@hmrc.gov.uk](mailto:payments.team@hmrc.gsi.gov.uk), *Redacted*, and to such other person and at such place as the Authority may notify to the Supplier from time to time.

### All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

### 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.

### If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 (*Payment in 30 days*) after a reasonable time has passed.

### The Supplier may only raise invoices as follows:

#### In respect of Milestones (both in respect of Transition and Termination Services), no earlier than the Achievement of the relevant Milestone;

#### For Service Charges on the second Working Day of the Service Period following the Service Period to which the Charge relates; and

#### For Projects, in accordance with the relevant Project Work Order.

## PAYMENT TERMS

### 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.

### 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

*Redacted*

# ANNEX 2: Charging mechanism and adjustments

*Redacted*

# ANNEX 3: Pro-forma Certificate of Costs

Where The Authority requires a pro-forma certificate of costs, this must be agreed as part of formal contract management activity, and included as part of the contract management plan.

Example wording for such a pro-forma certificate of costs is provided below:

# 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 Agreement]* (the “Agreement”) in relation to the following [Milestone/Milestone Group]:

# [*Insert details of Milestone/Milestone Group*]

# has been reasonably and properly incurred in accordance with [*name of Supplier*]’s books, accounts, other documents and records;

# is accurate and not misleading in all key respects; and

# is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

# Signed [*Director of Finance or equivalent*]

# [*Name of Supplier*]

# ANNEX 4: Risk Register

Where The Authority requires a risk register to be completed, these must be agreed as part of formal contract management activity, and included as part of the contract management plan.

The following is an example format which may be followed.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 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 7.2

PAYMENTS ON TERMINATION

**Payments on Termination**

## DEFINITIONS

### In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Applicable Supplier Personnel”** | any Supplier Personnel who:   1. at the Termination Date: 2. are employees of the Supplier; 3. are Dedicated Supplier Personnel; 4. 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 5. are dismissed or given notice of dismissal by the Supplier within: 6. forty (40) Working Days of the Termination Date; or 7. such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and 8. have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and 9. the Supplier can demonstrate to the satisfaction of the Authority: 10. are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; 11. are genuinely being dismissed for reasons of redundancy; and 12. 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”** | an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3; |
| **“Contract Breakage Costs”** | the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement; |
| **“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; |
| **“Profit Already Paid”** | the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date; |
| **“Redundancy Costs”** | 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:   * + 1. any statutory redundancy payment; and     2. 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 that would be payable if the Authority exercised its right under Clause 33.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date; |
| **“Termination Estimate”** | has the meaning given in Paragraph 10.2; |
| **"Termination Payment"** | means a payment made by the Authority to the Supplier upon termination of the Agreement equal to the sum of the Breakage Costs Payment, Redundancy Costs, Contract Breakage Costs, Unrecovered Costs, unpaid charges for services, and payments for assets and apportionments made pursuant to Schedule 8.5 (*Exit Management*); |
| **“Third Party Contract”** | a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (*Third Party Contracts*); |
| **“Total Costs Incurred”** | the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date; |
| **“Unrecovered Costs”** | the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model; |
| **“Unrecovered Payment”** | an amount equal to the lower of:   * + 1. the sum of the Unrecovered Costs and the Unrecovered Profit; and     2. the amount specified in Paragraph 4; and |
| **“Unrecovered Profit”** | (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date. |

## TERMINATION PAYMENT OVERVIEW

Upon termination of this Agreement pursuant to one of the events set out in Clause 33 (*Termination Rights*), the Authority may be required to pay to the Supplier in each named event of termination a Termination Payment as set out in the table below:

*Redacted*

## BREAKAGE COSTS PAYMENT

### 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 Agreement which:

#### would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

#### are unavoidable, proven, reasonable, and not capable of recovery;

#### are incurred under arrangements or agreements that are directly associated with this Agreement;

#### are not Contract Breakage Costs relating to contracts or Sub‑contracts with Affiliates of the Supplier; and

#### relate directly to the termination of the Services.

**Limitation on Breakage Costs Payment**

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

#### the relevant limit set out in Annex 1; and

#### one hundred and twenty per cent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

**Redundancy Costs**

### 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.

### Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, 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 thirty thousand pounds Sterling (£30,000) per relevant member of the Supplier Personnel.

**Contract Breakage Costs**

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

#### are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and

#### the Supplier can demonstrate:

##### 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

##### have been entered into by it in the ordinary course of business.

### 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.

### 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:

#### 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 Agreement; and/or

#### Assets not yet installed at the Termination Date.

## UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

#### the relevant limit set out in Annex 1;

#### one hundred and twenty per cent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

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

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

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

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

#### in relation to Supplier Personnel, seeking to redeploy Supplier Personnel within the Supplier organisation;

#### 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

#### 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.

### 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 8.4 (*Dispute Resolution Procedure*).

## FULL AND FINAL SETTLEMENT

Any Termination 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 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

## INVOICING FOR THE PAYMENTS ON TERMINATION

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 7.1 (*Charges and Invoicing*).

## SET OFF

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.

## NO DOUBLE RECOVERY

### 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 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

### The value of the Termination 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 Agreement so that there is no double counting in calculating the relevant payment.

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

## ESTIMATE OF TERMINATION PAYMENT

### The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

### The Supplier shall within twenty (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 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:

#### be based on the relevant amounts set out in the Financial Model;

#### include:

##### details of the mechanism by which the Termination Payment is calculated;

##### full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

##### such information as the Authority may reasonably require; and

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

### 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 Agreement***.***

### 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.

# ANNEX 1: Maximum Payments on Termination

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

*Redacted*

# SCHEDULE 7.3

VALUE FOR MONEY

**Value For Money**

## DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Benchmarked Service”** | a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.1; |
| **“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) and performed within the UK or Europe; |
| **“Comparison Group”** | in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom; |
| **“Equivalent Services Data”** | in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty six (36) months prior to the date of the appointment of the Benchmarker; |
| **“Good Value”** | in relation to a Benchmarked Service, that:   1. 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 2. 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 twenty five per cent (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. |

## PART A - BENCHMARKING

## 2. FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW



### 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. The Authority shall confirm which of the Services are to be the Benchmarked Services in its notice to the Supplier.

### The Authority shall not be entitled to carry out a Benchmark Review of any Services during the twelve (12) month period from the Effective Date, nor (subject always to Paragraph 2.3) at intervals of less than twelve (12) months after the completion of any previous Benchmark Review relating to the same Services.

### The Authority shall be entitled to initiate a Benchmark Review in determining whether to extend the Term of this Agreement in accordance with Clauses 4.2 to 4.5 (inclusive) of this Agreement.

## 3. APPOINTMENT OF BENCHMARKER

### The Authority shall appoint as the Benchmarker to carry out the Benchmark Review such organisation as the Authority, acting reasonably, deems appropriate. The Authority shall confirm the identity of the Benchmarker by written notice to the Supplier. If the Supplier, acting reasonably, disagrees with the identity of the Benchmarker that the Authority has selected, it shall notify the Authority in writing no later than five (5) days following the date of the Authority's written notification of the identity of the Benchmarker, giving reasons for its objection and proposing one or more alternatives. The Authority shall consider the Supplier's objection (and shall act reasonably in doing so) and shall seek to reach an agreement with the Supplier as to an alternative benchmarker, however the final decision as to the Benchmarker to be appointed shall rest with the Authority.

### The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in the form prescribed by the Authority which shall be in, or substantially in, the form set out in the Annex to this Schedule.

### The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.

### The Authority shall be entitled to pay the Benchmarker’s costs and expenses in full and to recover the Supplier’s share from the Supplier.

## 4. BENCHMARK REVIEW

### The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances.

### The Parties acknowledge and agree 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.

### Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (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.

### 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 thirty (30) Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

### 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 causes any delay or fails to provide any information requested from it by the Benchmarker whether described in the plan or reasonably requested by the Benchmarker, such failure or delay shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).

### 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.

## BENCHMARK REPORT

### The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan produced pursuant to Paragraph 4 setting out its findings. The Benchmark Report shall:

### include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;

### include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;

### 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

### illustrate the method used for any normalisation of the Equivalent Services Data

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

### 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 Paragraph 5.5) 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 three (3) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

### 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.

### The Supplier shall only 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.

### In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5, 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 Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

### On conclusion of the Expert Determination:

### 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

### 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:

### the Supplier shall immediately implement the relevant changes;

### 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

### the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes only of formalising and documenting the relevant change or amendment for the purposes of this Agreement (it being acknowledged and agreed that the decision as to whether and what changes are to be made has already been finalised by the Expert).

### 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 apply) or in accordance with Paragraph 5.7 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

**PART B - SAVINGS INITIATIVES**

## SAVINGS INITIATIVES

### The Parties agree that it is their intention to operate a gain share mechanism under this Agreement (**"Gain Share Mechanism"**), but this will only apply where a Gain Share opportunity is identified during the lifetime of the contract.

### The Supplier shall within 20 days of an opportunity being identified provide a detailed proposal to identify and report to the Authority (**"Gainshare Report"**) all efficiency gain proposals that might be applied to the Services to reduce the Charges payable under this Agreement and/or achieve savings to the Authority elsewhere.

### The Supplier shall include within the Gainshare Report:

### details of how the savings are calculated and the time period to which it relates. All savings set out in the Gainshare Report must be based in fact (and net of any costs incurred by the Authority) and incorporate a baseline measure, the costs necessary for each Party to achieve the savings (if any), budget forecast and measures to actualise the savings. The savings identified in the Gainshare Report shall be proven and auditable savings and not based on estimated or deemed savings; and

### an equitable and reasonable proposal as to how the savings to be achieved should be shared between the Authority and the Supplier.

### Subject to the Authorities approval, the proposals contained within a Gainshare Report shall be implemented through the Change Control Procedure.

### Unless otherwise agreed between the Parties, the savings achieved through the proposals contained within a Gainshare Report and implemented through the Change Control Procedure shall:

### be payable to the Supplier for the initial [twelve] months following such implementation and thereafter no further payment in respect of such proposals shall be due to the Supplier;

### be split between the Parties in that the Supplier shall be entitled to retain [fifty percent (50%)] of the financial gain and the remaining [fifty percent (50%)] of the financial gain shall be passed to the Authority which may include by way of a reduction in the Charges;

### be apportioned between the Parties in accordance with the proposal suggested by the Supplier in accordance with paragraph 1.3(b) above.

# ANNEX: Confidentiality Agreement

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on **[*date*]**

**BETWEEN:**

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

**WHEREAS:**

1. **[*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.
2. 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:**

## Interpretation

### 1.1 In this agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| **“Confidential Information”** | means:   1. Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:  the Supplier; orthe operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;  1. 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; 2. 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 3. Information derived from any of the above,   but not including any Information that:   1. was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier; 2. 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; 3. 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 4. 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. |

### In this agreement:

#### a reference to any gender includes a reference to other genders;

#### the singular includes the plural and vice versa;

#### the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

#### 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;

#### headings are included for ease of reference only and shall not affect the interpretation or construction of this agreement; and

#### references to Clauses are to clauses of this agreement.

## Confidentiality Obligations

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

#### treat all Confidential Information as secret and confidential;

#### 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);

#### 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;

#### not transfer any of the Confidential Information outside the United Kingdom;

#### not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;

#### 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

#### once the Permitted Purpose has been fulfilled:

##### destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

##### 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

##### make no further use of any Confidential Information.

## Permitted Disclosures

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

#### reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and

#### have been informed by the Benchmarker of the confidential nature of the Confidential Information; and

#### have agreed to terms similar to those in this agreement.

### 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 5.6 of Schedule 7.3 (*Value For Money*) to the Contract.

### 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.

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

#### 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

#### ask the court or other public body to treat the Confidential Information as confidential.

## General

### 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.

### This agreement does not include, expressly or by implication, any representations, warranties or other obligations:

#### to grant the Benchmarker any licence or rights other than as may be expressly stated in this agreement;

#### to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

#### 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.

### 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.

### 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.

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

### 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.

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

### 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.

## Notices

### 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.

### Any Notice:

#### if to be given to the Supplier shall be sent to:

**[*Address*]**

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

#### if to be given to the Benchmarker shall be sent to:

**[*Name of Organisation*]**  
**[*Address*]**

Attention: **[ ]**

## Governing law

### 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.

### 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 7.4

FINANCIAL DISTRESS

Financial Distress

## CREDIT RATING AND DUTY TO NOTIFY

### The Supplier shall:

#### regularly monitor its credit ratings and those of the Guarantor and each Key Sub-contractor with a number of industry recognised credit rating agencies; and

#### promptly notify (or shall procure that its auditors promptly notify) the Authority in writing and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of:

##### any downgrading in the credit rating issued by any credit rating agency for either the Supplier or the Guarantor; and / or

##### the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event in relation to the Supplier, its Guarantor and / or a Key Sub-contractor.

### If there is any downgrade credit rating issued by any credit rating agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier’s auditors or Guarantor’s auditors (as the case may be) thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of a written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

where:

|  |  |
| --- | --- |
| A | is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor (as the case may be); |
| B | is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Supplier or the Guarantor (as the case may be); and |
| D | the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be). |

## CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

### Immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 2.2 to 2.5.

### In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

#### rectify such late or non-payment; or

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

### The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

#### at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (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 Agreement; and

#### where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

##### submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (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); and

##### provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

### The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity 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 Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure.

### If the Authority considers that the draft Financial Distress Service Continuity 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 Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

### Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:

#### on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;

#### where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

#### comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

### Where the Supplier reasonably believes that the relevant Financial Distress Event (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 3.6.

## TERMINATION RIGHTS

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

#### the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2;

#### the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or

#### the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

# Schedule 8.1

GOVERNANCE

Governance

## DEFINITIONS

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 3.2; |
| **“Boards”** | the Operational Board and Executive Board and **“Board”** shall mean any of them; |
| **“Executive Board”** | the body described in Paragraph 5; |
| **"Operational Board"** | the body described in Paragraph 4. |

## MANAGEMENT OF THE SERVICES

### The Supplier Representative and the Authority Representative shall for the purposes of this Agreement manage the Services on a day‑to‑day basis.

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

## BOARDS

**Establishment and structure of the Boards**

### The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

### In the event that the Supplier wishes to replace any of its appointed Board Members, the Supplier shall notify the Authority in writing of the proposed change for agreement (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**

### Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

#### a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and

#### that he/she is debriefed by such delegate after the Board Meeting.

### Board meetings shall be quorate as long as at least two representatives from each Party are present.

### The Parties shall ensure that all Boards shall resolve the issues and achieve the objectives placed before them as soon as reasonably practicable. 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.

### The provisions of this Schedule are without prejudice to other provisions of this Agreement which require regular meetings to take place between the Parties in connection with the delivery of the Services (including Performance Review Meetings) and such other meetings which may be held with Other Suppliers and/or other third parties that the Authority may request from time to time. For the avoidance of doubt, such meetings shall also form part of the governance of this Agreement and the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf.

## ROLE OF THE OPERATIONAL BOARD

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

#### be accountable to the Executive Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;

#### receive reports on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan or a Project Plan and possible future developments;

#### review and report to the Executive Board on service management, Change, co-ordination of individual projects and any integration issues;

#### deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;

#### in accordance with the provisions of Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*), consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Executive Board;

#### develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;

#### ensure that this Agreement 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; and

#### if the Parties are unable to agree a Change in accordance with Schedule 8.3 (*Change Control Procedure*), assess the impact and approve or reject all Change Requests.

#### **Risk management**

### The Operational Board shall identify and manage risks relating to the performance of the Services.

**Technical oversight**

### The Operational Board shall be accountable to the Executive Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

### The Operational Board shall:

#### ensure compliance with the Standards;

#### grant dispensations for variations from such compliance where appropriate;

#### assure the coherence and consistency of the systems architecture for the Supplier Solution;

#### monitor developments in new technology and reporting on their potential benefit to the Services;

#### authorise the commissioning and initiation of, and assess opportunities for, Optional Services;

#### provide advice, guidance and information on technical issues;

#### assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority; and

#### ensure that this Agreement 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.

**Transition and Exit Management**

### The Operational Board shall manage all Implementation and Exit Management functions as required under Schedules 6.1 *(Implementation)* and 8.5 *(Exit Management).*

## ROLE OF THE EXECUTIVE BOARD

### The Executive Board shall consider and resolve Disputes escalated to it by the Operational Board and shall provide executive level guidance, leadership and strategy for the delivery of the Services when required by the Operational Board.

## CONTRACT MANAGEMENT MECHANISMS

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

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

#### the identification and management of risks;

#### the identification and management of issues; and

#### monitoring and controlling project plans.

### The Risk Register shall be updated by the Supplier and submitted for review by the Operational Board.

## ANNUAL REVIEW

### An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

### The meetings shall be attended by theAccount Manager of the Supplier and the Philip Cottrill of the Authority and any other persons considered by the Authority necessary for the review.

# ANNEX 1: Board Representation and Structure

Operational Board Representation and Structure

*Redacted*

Executive Board Representation and Structure

*Redacted*

# SCHEDULE 8.2

REPORTS AND RECORDS

REPORTS AND RECORDS

## TRANSPARENCY REPORTS

### 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 transparency reports in accordance with Annex 1 (**"Transparency Reports"**).

### If the Authority rejects any proposed 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.

### 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.

### 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.

### The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

**2 OTHER REPORTS**

### The Supplier shall provide to the Authority:

#### the reports listed, and at the frequencies set out, in Annex 2 to this Schedule 8.2 (*Reports and Records*); and

#### any or all of the following reports at the Authority's request:

##### delay reports;

##### reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Capability*);

##### Performance Monitoring Reports;

##### reports which the Supplier is required to supply as part of the Management Information;

##### annual reports on the Insurances;

##### security reports;

##### an SME report, which contains information in relation to Sub-contractors including (without limitation): the name, postal address and registration number of the relevant Sub-contractor; the commencement and expiry dates of the relevant Sub-contract; the relevant Sub-contract value and spend in the relevant quarter; and the number of apprentices employed in relation to that Sub-contract; and

##### Force Majeure Event reports.

## RECORDS

### The Supplier shall retain and maintain all the records (including superseded records) referred to in this Agreement (together **“Records”**):

#### in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;

#### in chronological order;

#### in a form that is capable of audit; and

#### at its own expense.

### The Supplier agrees that it shall:

#### store all records and reports that it is obliged to maintain and provide pursuant to this Agreement in such document repository or system that the Authority may have or put in place for the storing, sharing and management of records and reports as it may notify to the Supplier from time to time (**"Document Repository"**); and

#### comply with such guidance as the Authority may issue or provide in relation to the Document Repository from time to time.

#### It is acknowledged and agreed that the Authority may also use the Document Repository as a means of uploading and storing its documents that the Supplier may need to access from time to time.

### Notwithstanding the provisions of paragraph 3.2, the Supplier shall on demand, at no cost to the Authority and without imposing any restrictions, make the Records available for inspection to and/or copying by the Authority and/or its nominee in a format reasonably accessible to the Authority, subject to the Authority giving reasonable notice.

### The Supplier shall hold Records in electronic format (and, if required by the Authority, paper format) and must be made available and/or be accessible to the Authority and its Audit Agents for audit purposes.

### The Supplier shall, during the Term and a period of at least seven years following the expiry or termination of this Agreement:

#### maintain or cause to be maintained in safe storage complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records and Open Book Data; and

#### upon reasonable notice, disclose and allow the Authority and/ or its Audit Agents the right to access the information described at Paragraph 3.5(a).

### Following the expiry of seven years after the expiry or termination of this Agreement, the Supplier shall securely dispose of or provide to the Authority all Records without keeping any copies and if required to do so by the Authority, the Supplier shall provide written confirmation of compliance with this Paragraph 3.6.

### The provisions of Paragraph 3.6 shall not apply to the extent that the Supplier is required to retain the Records by any applicable Law or for the purposes of any audit.

# ANNEX 1: TRANSPARENCY REPORTS

Where The Authority requires transparency reports, these will be agreed with The Supplier as part of formal contract management activity, and included as part of the contract management plan.

# ANNEX 2: REPORTS TO BE PROVIDED BY THE SUPPLIER

*Redacted*

# ANNEX 3: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management*).
18. A complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Agreement, in order to monitor any actual or suspected slavery or human trafficking in those supply chains in compliance with the Suppliers’ obligation in Clause 35.5.
19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

SCHEDULE 8.3

CHANGE CONTROL PROCEDURE

Change Control Procedure

## DEFINITIONS

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

## GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

### This Schedule sets out the procedure for dealing with Changes.except:

#### changes to Schedule 11 (*Collaboration*); or

#### changes that, as a result, require a change to Schedule 11 (*Collaboration*)

#### which shall be managed in accordance with Schedule 11 (*Collaboration*).

### 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.

### The Parties shall deal with Contract Change as follows:

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

#### unless this Agreement 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;

#### 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;

#### the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;

#### save as otherwise provided in this Agreement, 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

#### a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

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

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

#### 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 Agreement as if the proposed Contract Change did not apply; and

#### 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 Agreement.

### The Supplier shall:

#### within ten (10) Working Days of the Authority’s signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement 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

#### thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

## COSTS

### Subject to Paragraph 3.3:

#### the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

#### 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 if:

##### such costs are below £10,000

##### the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or

##### such costs exceed those in the accepted Impact Assessment Estimate.

### 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 7.1 (*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.

### 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.

## CHANGE REQUEST

### 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.

### 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 ten (10) Working Days of the date of issuing the Change Request.

### 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.

### 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:

* + 1. the nature of the request for clarification; and
    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.

## IMPACT ASSESSMENT

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

#### details of the proposed Contract Change including the reason for the Contract Change;

#### 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 Agreement;

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

##### the Services Description, the Performance Indicators and/or the Target Performance Levels;

##### the format of Authority Data, as set out in the Services Description;

##### the Milestones, Implementation Plan or Project Plan and any other timetable previously agreed by the Parties;

##### 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;

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

#### 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;

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

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

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

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

### 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.

### If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (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 ten (10) Working Days of receiving such notification. The Supplier shall ensure that the reissued Impact Assessment will contain the information requested by the Authority. 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.

### The calculation of costs for the purposes of Paragraphs 5.1(d) and 5.1(e) shall:

#### be based on the Financial Model;

#### facilitate the Financial Transparency Objectives;

#### include estimated volumes of each type of resource to be employed and the applicable rate card;

#### include full disclosure of any assumptions underlying such Impact Assessment;

#### include evidence of the cost of any assets required for the Change; and

#### include details of any new Sub-contracts necessary to accomplish the Change.

## AUTHORITY’S RIGHT OF APPROVAL

### Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (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:

#### approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;

#### 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

#### 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 five (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 ten (10) Working Days.

### 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 7, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority'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 Agreement.

### If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## SUPPLIER’S RIGHT OF REJECTION

### Following an Impact Assessment, if:

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

##### materially and adversely affect the risks to the health and safety of any person; and/or

##### require the Services to be performed in a way that infringes any Law; and/or

#### 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 five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

## FAST-TRACK CHANGES

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

### If:

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

#### 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),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

### 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 four (4) in a twelve (12) month period.

## OPERATIONAL CHANGE PROCEDURE

### 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:

#### have an impact on the business of the Authority;

#### require a change to this Agreement;

#### have a direct impact on use of the Services; or

#### involve the Authority in paying any additional Charges or other costs.

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

### The RFOC shall include the following details:

#### the proposed Operational Change; and

#### the time-scale for completion of the Operational Change.

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

### 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.

## COMMUNICATIONS

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

# ANNEX 1: Change Request Form

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| CR NO.: | TITLE: | | | TYPE OF CHANGE: |
| CONTRACT: | | | REQUIRED BY DATE: | |
| ACTION: | | NAME: | | DATE: |
| RAISED BY: | | | | |
| AREA(S) IMPACTED (*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: [*if any*] ] | | | |
| 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 8.4

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

## DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“CEDR”** | the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| “**Counter Notice**” | has the meaning given in Paragraph 7.2; |
| **“Expert”** | in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute; |
| **“Expert Determination”** | determination by an Expert in accordance with Paragraph 6; |
| **“Related Third Party Dispute”** | a Dispute which involves the Parties and one or more Related Third Parties; |
| “**Related Third Party Dispute Representatives**” | has the meaning given in Paragraph 9.6; |
| “**Related Third Party Dispute Resolution Board**” | has the meaning given in Paragraph 9.6; |
| **“Related Third Party”** | a party to:   1. another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or 2. a Sub‑contract; and |
| **“Supplier Request”** | a notice served by the Supplier requesting that the Dispute be treated as a Related Third 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. |

## DISPUTE NOTICES

### If a Dispute arises then:

#### the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

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

### A Dispute Notice:

#### shall set out:

##### the material particulars of the Dispute;

##### the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

##### if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

#### may specify in accordance with the requirements of Paragraphs 8.2 and 8.3 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 Related Third Party Dispute, in which case Paragraph 2.3 shall apply.

### If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Related Third Party Dispute pursuant to Paragraph 2.2(b), then:

#### if it is served by the Authority it shall be treated as a Related Third Party Dispute Initiation Notice; and

#### if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 8 shall apply.

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

#### first by commercial negotiation (as prescribed in Paragraph 4); and

#### lastly by recourse to arbitration (as prescribed in Paragraph 6) or litigation (in accordance with Clause 47 (*Governing Law and Jurisdiction*)).

### Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 5.1.

### Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Related Third Party Dispute Initiation Notice or proceedings under Paragraph 7 (*Urgent Relief*).

## EXPEDITED DISPUTE TIMETABLE

### 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 five (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.

### 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 Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

#### in Paragraph 4.1, ten (10) Working Days;

#### in Paragraph 5.2, five (5) Working Days; and

#### in Paragraph 6.2, ten (10) Working Days.

### 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. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

## COMMERCIAL NEGOTIATION

### Following the service of a Dispute Notice, then, so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, the Parties shall refer the Dispute to the Operational Board for consideration and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Operational Board, then the Authority may, at its sole discretion, escalate any Dispute to the Executive Board for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Executive Board then the provision of paragraph 4.2 shall apply.

### If the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice, and where the Dispute is of a kind referred to in Paragraph 5.1, either Party may serve a written notice to proceed to Expert Determination in accordance with Paragraph 5. For Disputes which are not of a kind referred to in Paragraph 5.1, the Parties have a right to refer the Dispute to arbitration in accordance with Paragraph 6.

## EXPERT DETERMINATION

### If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 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.

### The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 5.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

#### 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);

#### 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

#### if the Dispute relates to a matter of a technical nature not falling within Paragraphs 5.2(a)) or 5.2(b), on the instructions of the president (or equivalent) of:

##### an appropriate body agreed between the Parties; or

##### if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 5.1, such body as may be specified by the President of the Law Society on application by either Party.

### The Expert shall act on the following basis:

#### he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

#### the Expert's determination shall (in the absence of fraud or manifest error) be final and binding on the Parties, unless within twenty (20) Working Days of that decision a Party serves notice on the other Party referring the Dispute to either arbitration or court proceedings pursuant to Paragraph 7;

#### the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (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;

#### any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

#### the process shall be conducted in private and shall be confidential; and

#### the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## ARBITRATION

### Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 5, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 6.5.

### Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (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 6.5 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 fifteen (15) Working Day period.

### If the Authority serves a Counter Notice, then:

#### if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 6.5 shall apply; or

#### 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.

### If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 6.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

### The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 6.1 to 6.4:

#### 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 6.5(e), (f) and (g));

#### the arbitration shall be administered by the LCIA;

#### 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 Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

#### if the Parties fail to agree the appointment of the arbitrator within ten (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;

#### the Authority shall decide in its discretion whether the Dispute shall be determined by a single arbitrator or a panel of three arbitrators. The single arbitrator or chair of the arbitral tribunal shall be a senior English-qualified lawyer who shall be a QC of at least ten years standing or a retired judge;

#### the arbitration proceedings shall take place in London and in the English language; and

#### the seat of the arbitration shall be London.

## URGENT RELIEF

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

#### for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party’s Intellectual Property Rights; and/or

#### where compliance with Paragraph 2.1 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## MULTI-PARTY DISPUTES

### All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 (the “**Related Third Party Dispute Resolution Procedure**”).

### 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 Related Third Party Dispute and to serve a notice on the Supplier which sets out the Authority’s determination that the Dispute is a Related Third Party Dispute and specifies the Related Third Parties which are to be involved in the Related Third Party Dispute Resolution Procedure, such notice a “**Related Third Party Dispute Initiation Notice**”.

### If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 6, 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.

### The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:

#### a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or

#### not a Related Third 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 7.

### If the Authority has determined, following a Supplier Request, that a Dispute is not a Related Third Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

### Following service of a Related Third Party Dispute Initiation Notice a Related Third Party Dispute shall be dealt with by a board (in relation to such Related Third Party Dispute, the “**Related Third Party Dispute Resolution Board**”) comprising representatives from the following parties to the Related Third Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Related Third Party Dispute:

#### the Authority;

#### the Supplier;

#### each Related Third Party involved in the Related Third Party Dispute; and

#### any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Related Third Party Dispute Representatives**”).

### The Parties agree that the Related Third Party Dispute Resolution Board shall seek to resolve the relevant Related Third Party Dispute in accordance with the following principles and procedures:

#### the Parties shall procure that their Related Third Party Dispute Representatives attend, and shall use their best endeavours to procure that the Related Third Party Dispute Representatives of each Related Third Party attend, all meetings of the Related Third Party Dispute Resolution Board in respect of the Related Third Party Dispute;

#### the Related Third Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Related Third Party Dispute 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 five (5) Working Days of service of the relevant Related Third Party Dispute 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 9.00 am and 5.00 pm on a Working Day; and

#### in seeking to resolve or settle any Related Third Party Dispute, the members of the Related Third Party Dispute Resolution Board shall have regard to the principle that a Related Third 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 Related Third Party Dispute.

### If a Related Third Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Related Third Party Dispute Initiation Notice (or such longer period as the Parties may agree in writing), then:

#### either Party may request that the Related Third Party Dispute is referred to an expert in which case Paragraph 5 shall apply; and/or

#### subject to Paragraph 8.9, Paragraph 6 shall apply to the Related Third 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.

### If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 6 or a Dispute becomes a Related Third 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 8.5

EXIT MANAGEMENT

**Exit Management**

## DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Assistance Commencement Date"** | has the meaning set out in Paragraph 6.1(e) of Schedule 8.5 (*Exit Management*); |
| **"Authority CDIO"** | means the Authority's Chief Digital and Information Officer; |
| **"Data Matrix"** | means the Authority's data requirements and associated timeframes for data provision as set out in Annex 2 (*Data Matrix*) of Schedule 8.5 (*Exit Management*), as may be amended from time to time by the written agreement of the Parties; |
| **"Emergency Exit"** | any termination of this Agreement which is a:   1. termination of the whole or part of this Agreement in accordance with Clause 33 (*Termination Rights*), except where the period of notice given under that Clause is less than 6 months; 2. termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (*Termination Rights*); or 3. wrongful termination or repudiation of this Agreement by either Party; |
| **"Exclusive Assets"** | those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services to the Authority, but excluding the Supplier Software; |
| **"Exit Information"** | has the meaning given in Paragraph 4.1; |
| **"Exit Manager"** | the person appointed by each Party pursuant to Paragraph 3.3 for managing the Parties' respective obligations under this Schedule; |
| **"Government Controlled Company"** | means any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law; |
| **“Fair Market Value”** | means the transfer value of any applicable assets or consumables, as determined with reference to assets of a similar in type and condition, bought and sold in ‘arms length’ transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties; |
| **"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 Agreement; |
| **"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 Course of Business"** | means either:   1. any acts, omissions or conduct which is consistent in all respects with the prevailing pattern, or course of conduct, or management used by the Supplier in the fulfilment of the Services or undertaken in order to comply with the applicable obligations under the Agreement; or 2. acts, omissions or conduct which a well-managed company would undertake (assuming that such company is acting in a prudent and reasonable manner) in relation to the fulfilment of the Services, or in order to comply with all applicable obligations under the Agreement; |
| **"Ordinary Exit"** | any termination of this Agreement which occurs:   1. pursuant to Clause 33 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or 2. as a result of the expiry of the Initial Term or any Extension Period; |
| **"Public Procurement Process"** | means the acquisition by public means of a public contract of works, suppliers or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, suppliers or services are intended for a public purpose, as the same is defined (as 'procurement') in section 2 of the Public Contracts Regulations 2015; |
| **"Registers"** | the register and configuration database referred to in Paragraphs 3.1(a) and 3.1(b); |
| **"Services Transfer Date"** | means the date on which the Services are transferred from the control of and provision by the Supplier to the control of and provision by a Replacement Supplier; |
| **"Technical Meetings"** | means a meeting between the Authority and the Supplier to discuss technical and other issues as more particularly described in Paragraph 1.1 to Schedule 8.5 (*Exit Management*); |
| **"Transferring Assets"** | has the meaning given in Paragraph 6.11(a); |
| **"Transferring Contracts"** | has the meaning given in Paragraph 6.11(c); |
| **"Transferring Services"** | means the Services or parts of a Service which are removed by the Authority in accordance with the provisions of the Agreement including on termination of the Agreement (in whole or in part). |

## OVERVIEW

### This Schedule sets out the exit management process by which the Supplier shall transfer Services to a Replacement Supplier (including to the Authority or a Government Controlled Company).

### The objective of the exit management process is to facilitate the smooth transfer of the Services to the Authority, a Government Controlled Company and/or a third party Replacement Supplier in a way that preserves business continuity for the Authority in respect of the remaining Services (if any) and to enable the Authority, a Government Controlled Company and/or its potential Replacement Supplier to assume responsibility for the Services from the applicable Services Transfer Date.

## OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

### The Supplier may, within three (3) months following the Effective Date and during the Term:

#### create and maintain a register of all:

##### Assets, detailing their:

* + - * 1. make, model and asset number;
        2. ownership and status as either Exclusive Assets or Non-Exclusive Assets;
        3. Net Book Value;
        4. condition and physical location; and
        5. use (including technical specifications); and

##### 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;

#### 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;

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

#### 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;

#### make available the Registers to the Authority on request; and

#### warrant the accuracy of the content of such Registers in accordance with Paragraph 4.8.

### The Supplier may ensure 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 Agreement.

### 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 three (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 Agreement and all matters connected with this Schedule and each Party's compliance with it.

### Schedule 8.1 *(Governance*) sets out the governance meeting framework and escalation process with respect to the subject matter of this Schedule 8.5 (*Exit Management*).

## OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

### On reasonable notice at any point during the Term, the Supplier shall provide to the Authority such reasonable assistance as the Authority may require to enable the Authority to retender for Replacement Services and 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:

#### details of the Service(s);

#### a copy of the Registers (including details of where and how the Registers are held), updated by the Supplier up to the date of delivery of such Registers;

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

#### a populated Data Matrix and all accompanying materials relating to the Data Matrix, including organograms, (to the extent such data and materials are available to the Supplier at the time of the Authority's request for such information and as agreed between the Parties) in a readable and agreed format, in accordance with the timescales set out in the Data Matrix;

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

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

#### to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Agreement, such information to include the Staffing Information; and

#### such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

### The Supplier acknowledges that the Authority may request the Exit Information specified in Paragraph 4.1 above more than once during the Term.

### 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 4.3 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).

### The Supplier shall:

#### notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely affect the financial condition, business or operations of the Authority or adversely impact upon the potential transfer and/or continuance of any Services, and shall consult with the Authority regarding such proposed material changes;

#### promptly update the Exit Information in respect of a material change as described in Paragraph 4.4(a);

#### ensure that the Exit Information is up to date every 3 months; and

#### provide updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

### The Exit Information and all accompanying materials 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:

#### prepare an informed offer for those Services; and

#### not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

### The Supplier shall provide the Exit Information to the Authority and/or its Replacement Supplier in a specific format (which shall be agreed by the Parties) to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier.

### The Supplier warrants and undertakes that all information included in the Exit Information and all accompanying materials shall be accurate and the Authority and/or its Replacement Supplier shall be entitled to rely on the accuracy of Exit Information provided. In the event that the Exit Information is found to be materially inaccurate, the Supplier shall rectify and correct such data and provide such rectified and correct data to the Authority as soon as reasonably practicable. If the Supplier still fails to provide correct data or where the Authority believes there is an unreasonable delay in providing such data, then the Authority may escalate the non-compliance for resolution in accordance with the Dispute Resolution Procedure, and the Authority and/or its Replacement Supplier shall be entitled to bring a claim against the Supplier for material breach of its obligations under this Paragraph 4.8.

### No later than two (2) months prior to the Services Transfer Date, the Supplier may provide to the Authority and/or its Replacement Supplier an example of the Supplier's format of the payroll information using anonymised data to assist the Authority and/or its Replacement Supplier to carry out a trial run of the payroll for the Transferring Employees.

## EXIT PLAN

### The Supplier may, within three (3) months after the Effective Date, deliver to the Authority a draft Exit Plan which:

#### sets out the Supplier's proposed methodology for achieving an orderly transition of Services (or a particular sub-set of the Services) from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination (in whole or in part) of this Agreement, and the maintenance of a 'business as usual' environment for the Authority during the Termination Assistance Period;

#### complies with the requirements set out in Paragraph 5.3;

#### is otherwise reasonably satisfactory to the Authority; and

#### is in a format and using a software tool agreed by the Authority.

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

### The Exit Plan may set out, as a minimum:

#### separate processes 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;

#### the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;

#### the management structure to be employed during the Termination Assistance Period;

#### 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;

#### how the Exit Information is obtained;

#### how the Services will transfer to the Replacement Supplier(s) 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);

#### 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);

#### a timetable and critical issues for providing the Termination Services;

#### 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;

#### how the Termination Services would be provided (if required) during the Termination Assistance Period;

#### procedures to:

##### deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);

##### determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and

##### identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees; and

#### 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.

### The Parties acknowledge that the transfer 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.

### The Supplier may review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule once every six (6) months 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

### Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), the Supplier may 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 may be prepared on a basis consistent with the principles set out in this Schedule and may reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

### 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 may be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier may 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).

**Monitoring of the Exit Plan**

### The Supplier’s performance against the Exit Plan may be monitored at meetings of the Operational Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the Supplier may provide to the Authority not less than 5 Working Days in advance of each meeting of the Operational Board:

##### the final form of the Exit Plan as approved under Paragraph 5.6, or the last approved version of the Exit Plan in the circumstances described at Paragraph 5.7; and

##### any reports as specified in the Exit Plan.

## TERMINATION SERVICES

Notification of Requirements for Termination Services

### The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**):

#### at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice;

#### where, pursuant to any right under the Agreement or at Law, the Authority has given written notice to remove any Services (or a particular sub-set of the Services) from the scope of the Agreement (whether following a competitive bid process or otherwise);

#### where the Authority wishes to hold a Public Procurement Process in relation to any of the Services (or a particular sub-set of the Services); or

#### where the Authority initiates a procurement process (other than a Public Procurement Process where a public notice is required to be given) in relation to any of the Services (or a particular sub-set of the Services).

#### The Termination Assistance Notice shall specify:

#### the date from which the Supplier shall commence providing the Termination Services ("**Assistance Commencement Date**");

#### the nature of the Termination Services required; and

#### the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 2 months after the date that the Supplier ceases to provide the Services.

### The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have 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

### Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

#### continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;

#### 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 termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;

#### use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;

#### 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

#### at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

### Without prejudice to the Supplier’s obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

### 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

### The Supplier shall comply with all of its obligations contained in this Schedule 8.5 (Exit Management).

### Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:

#### cease to use the Authority Data;

#### 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);

#### 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. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;

#### return to the Authority such of the following as is in the Supplier's possession or control:

##### all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;

##### all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;

##### any parts of the IT Environment and any other equipment which belongs to the Authority; and

##### any items that have been on-charged to the Authority, such as consumables;

#### vacate any Authority Premises;

#### provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:

##### such information relating to the Services as remains in the possession or control of the Supplier; and

##### such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

### Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party 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.

### Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

1. GOVERNANCE

Both Parties shall comply with the provisions in Schedule 8.1 (*Governance*) in relation to the management and governance of Termination Assistance.

1. ASSETS, Sub-CONTRACTS AND SOFTWARE
   1. Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

#### 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;

#### (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

#### terminate, enter into or vary any licence for software in connection with the Services.

* 1. Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:

#### which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");

#### which, if any, of:

##### the Exclusive Assets that are not Transferring Assets; and

##### the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

#### which, if any, of the Sub-contracts the Authority does not require to be assigned or novated to the Authority and/or the Replacement Supplier and all other Sub-contracts shall be 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. The Supplier shall freeze the lists of Transferring Assets and Transferring Contracts and shall update them (with the Authority’s prior written consent) only as and when changes are required in order to continue the fulfilment of the Transferring Services in the Ordinary Course of Business. 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 Transferring Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services.

* 1. With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall be obliged to sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a sum agreed between the parties. The final price may be affected where:

#### 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

#### 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 Agreement, in which case the Authority shall pay the Supplier the sum agreed less the amount already paid through the Charges.

* 1. 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.
  2. During the Termination Assistance Period, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Transferring Contracts used wholly or mainly to provide the Transferring Services to expire, without the Authority’s prior written consent (such consent not to be unreasonably withheld).
  3. 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 provide full copies of the Transferring Contracts to the Authority (and/or the Replacement Supplier at the Authority's request) no less than 4 weeks before the date the novation or assignment is to take effect. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
  4. The Authority shall:

#### accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

#### 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.

* 1. 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.
  2. The Supplier shalltransfer to the Replacement Supplier the benefit of any manufacturers’ warranties (“**Manufacturer’s Warranties**”) applicable wholly to the transferring Services where the Supplier is able to transfer the benefit thereunder. To the extent that the benefit of any such Manufacturer’s Warranty cannot be transferred to the Replacement Supplier except by way of a novation agreement or by obtaining a consent, an approval, a waiver or the like from the manufacturer or other third party (“**Consents**”):

#### the Supplier shall (unless otherwise agreed) use commercially reasonable efforts to procure such Consents or the novation of the relevant Manufacturer’s Warranties to the Replacement Supplier; and

#### unless or until any such Manufacturer’s Warranty is so novated or any necessary Consent is obtained, the Supplier will receive and hold the benefit of the relevant Manufacturer’s Warranty for the Replacement Supplier and the Authority will pay or reimburse any sums (as agreed between the Parties) properly payable in connection with such Manufacturer’s Warranty after each Services Transfer Date, as the case may be.

* 1. Except where the Authority has expressly agreed through the Change Control Procedure that a waiver shall apply in respect of a particular specified Transferring Contract, the Supplier shall pay any fees required for the transfer of the Transferring Contracts.
  2. 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 6.15 in relation to any matters arising prior to the date of assignment or novation of such Sub‑contract.
  3. At any time following a Termination Notice, the Supplier shall promptly notify the Authority of any material changes to any enterprise-wide Sub-contract which may have a material impact on the fulfilment of the Transferring Services.

1. SUPPLIER PERSONNEL
   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 9.1 (*Staff Transfer*) may apply.
   2. The Supplier shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Authority 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 or Replacement Sub-contractor.
   3. During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:

#### give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;

#### consent to any election by the Authority, Replacement Supplier and/or Replacement Sub-contractor to carry out pre-transfer collective consultation under S198A - 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 and thereafter facilitate such consultation;

#### co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.

* 1. 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 either where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy or where an offer is made pursuant to an express right to make such offer under Schedule 9.1 (*Staff Transfer*) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

1. CHARGES
   1. The Authority shall pay the Charges to the Supplier in respect of the Termination Services carried out during the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), in accordance with the rates set out in Annex 1 of Schedule 7.1 (Charges and Invoicing), subject to the cap agreed by both parties as part a formal exit management plan. The Authority shall not be required to pay any other costs in respect of the Termination Services. If the scope or timing of the Termination Services is changed and this results in a change to the Charges for such Termination Services, the cap may be varied in accordance with the Change Control Procedure.
   2. Except as otherwise expressly specified in this Agreement, the Supplier shall not charge 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.
2. APPORTIONMENTS
   1. Where applicable, 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:

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

#### 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

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

* 1. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

1. DISPUTES

During any Termination Assistance Period, the Supplier shall maintain and update a list of on-going and/or threatened disputes in relation to any of the Supplier's Solution or Transferring Contracts in so far as they relate to the Transferring Services and shall use its commercially reasonable efforts to resolve such disputes. The Supplier shall not settle any such dispute(s) nor accept any liability (either on its own behalf or that of the Authority) without obtaining the Authority’s prior written consent (which shall not be unreasonably withheld) where any such settlement affects the interests of the Authority.

1. Ethical Walls Agreement

The Supplier shall prior to the expiry or earlier termination of this Agreement enter into an agreement in the form set out at Annex 3 of this Schedule 8.5 without which the Authority may elect at its sole discretion that the Supplier may not take part in any future procurement exercise carried out by the Authority in relation to the Services (including Replacement Services).

# ANNEX 1: Scope of the Termination Services

### The Termination Services to be provided by the Supplier may include such of the following services as the Authority may specify:

#### ceasing all non-critical Software changes (except where agreed in writing with the Authority);

#### notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

#### 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;

#### 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);

#### providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;

#### with respect to work in progress, including any in-flight projects, as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition and providing support and collaboration for the transition of any in-flight projects;

#### providing the Authority with any problem logs which have not previously been provided to the Authority;

#### 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;

#### 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;

#### reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;

#### 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;

#### assisting in establishing naming conventions for any new production site;

#### analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;

#### generating a computer listing of the Source Code of any Specifically Written Software in a form and on media reasonably requested by the Authority;

#### agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority Personnel, customers and key stakeholders;

#### agreeing with the Authority a handover plan for all of the Supplier’s responsibilities as set out in the Security Management Plan;

#### delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;

#### assisting with the loading, testing and implementation of the production databases;

#### assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;

#### in respect of the maintenance and support of the Supplier System, providing historical performance data for the contract term;

#### assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);

#### providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;

#### answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;

#### 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;

#### 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:

##### to information and documentation relating to the 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

##### 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, including those employees filling the relevant Key Personnel positions and Key Personnel with specific knowledge in respect of the Exit Plan;

#### knowledge transfer services, including:

##### 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;

##### providing as early as possible 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;

##### providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier's or its Sub-contractors' personnel of suitable experience and skill and 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

##### allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its facilities 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);

#### regarding any escrow agreement in relation to the Supplier Software, Supplier Background IPR, Specifically Written Software, Project Specific IPRs that may exist, details of where it is lodged and any other related information as may be required by the Authority.

### The Supplier may:

* + 1. provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreemedata nt by the Authority at the time of termination or expiry of this Agreement;
    2. co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
    3. fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(x), providing skills and expertise of a reasonably acceptable standard.

### To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier may 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.

### The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(z) may include:

#### copies of up-to-date procedures and operations manuals;

#### product information;

#### agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;

#### key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;

#### 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;

#### details of physical and logical security processes and tools which will be available to the Authority; and

#### any relevant interface information,

#### and such information shall be updated by the Supplier at the Services Transfer Date.

### 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:

#### any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:

##### sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

##### 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

#### the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

### Assets

#### No later than two (2) years before the intended expiry of the Term, the Supplier shall engage an independent expert, with the agreement of the Authority, to write a review of the physical condition of all the Supplier-owned or Supplier-leased Assets used in connection with the Supplier Solution including an assessment of whether such Assets shall be capable of continued, satisfactory use in services similar to those Services provided by the Supplier for at least twelve (12) months after expiry of the Term. The Supplier shall provide the Authority with a copy of this report as soon as it is available, and in any event, no later than eighteen (18) months prior to the intended expiry of the Term.

#### Where the expert’s written review identifies any deficiencies that he/she advises should be remedied by the Supplier, the Supplier shall take such actions as are reasonably necessary to remedy such deficiencies.

#### In the event that the Authority exercises its right to extend the Term, Sections (a) and (b) above shall be repeated no later than two (2) years before the intended expiry of the Term (as so extended). The Supplier shall be entitled to recover its costs in connection with the conduct of such further review through the Charges, as adjusted in line with the revised version of the Financial Model agreed between the Parties as described in Clause [tbc] of the Agreement.

### Consumables

The Supplier shall at all times during the Term, maintain adequate stocks of all consumables used in the fulfilment of the Services where it is required to provide such consumables as part of its provision of Services as well as continuity of supply of the current stock order book. Within a reasonable period following the applicable Services Transfer Date, the Supplier shall sell, and the Authority (or, if required by the Authority, the Replacement Supplier) shall purchase, such stocks of consumables wholly used in the fulfilment of the Transferring Services from the Supplier at Fair Market Value.

# Annex 2: DATA MATRIX

Where The Authority requires a data matrix, The Supplier must provide this and include it as part of a formal contract exit plan.

# Annex 3: Ethical walls agreement

Where The Authority requires an ethical walls agreement, The Supplier must provide this and include it as part of a formal contract exit plan.

# SCHEDULE 8.6

BUSINESS CONTINUITY AND DISASTER CAPABILITY

## DEFINITIONS

### In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Business Continuity Plan”** | has the meaning given in Paragraph 2.2(a)(ii)); |
| **“Business Continuity Services”** | has the meaning given in Paragraph 4.2(b); |
| **“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 period of **24 hours** or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period; |
| **“Disaster Capability Plan”** | has the meaning given in Paragraph 2.2(a)(iii); |
| **“Disaster Capability Services”** | the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster; |
| **“Disaster Capability System”** | the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster **Capability** Services; |
| **“Related Service Provider”** | any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date |

## BCDC PLAN

### Within forty (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:

#### ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

#### ensure the recovery of the Services in the event of a Disaster.

### The BCDC Plan shall:

#### be divided into three parts:

##### Part A which shall set out general principles applicable to the BCDC Plan;

##### Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and

##### Part C which shall relate to disaster capability(the **“Disaster Capability Plan”**); and

#### unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.

### Following receipt of the draft BCDC Plan from the Supplier, the Authority shall:

#### review and comment on the draft BCDC Plan as soon as reasonably practicable; and

#### notify the Supplier in writing that it approves or rejects the draft BCDC Plan no later than twenty (20) Working Days after the date on which the draft BCDC Plan is first delivered to the Authority.

### If the Authority rejects the draft BCDC Plan:

#### the Authority shall inform the Supplier in writing of its reasons for its rejection; and

#### the Supplier shall then revise the draft BCDC Plan (taking reasonable account of the Authority's comments) and shall re‑submit a revised draft BCDC Plan to the Authority for the Authority's approval within twenty (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 BCDC Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

## GENERAL PRINCIPLES AND REQUIREMENTS

### The BCDC Plan shall:

#### set out how the business continuity and disaster capability elements of the Plan link to each other;

#### detail how the BCDC Plan links and interoperates with any overarching and/or connected disaster capability or business 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;

#### identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDC Plan; and

#### provide details of how the invocation of any element of the BCDC Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;

#### 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 and disaster capability where applicable;

#### set out key contact details (including roles and responsibilities) for the Supplier (and any Sub‑contractors) and for the Authority;

#### 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.

#### 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 desktop configurations, where required by the Authority;

#### provide for documentation of processes, including business processes, and procedures;

#### contain a risk analysis, including:

##### failure or disruption scenarios and assessments and estimates of frequency of occurrence;

##### identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

##### identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and

##### a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

#### identify the procedures for reverting to “normal service”;

#### 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;

### The BCDC Plan shall be designed so as to ensure that:

#### the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDC Plan;

#### the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;

#### it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force;

#### there is a process for the management of disaster capability testing detailed in the BCDC Plan; and

#### it complies and is consistent with the requirements set out in the Ecosystem BCDC Plan.

### The BCDC Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

### 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 Agreement.

## BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

### 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:

#### 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

#### 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.

### The Business Continuity Plan shall:

#### address the various possible levels of failures of or disruptions to the Services;

#### 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**”);

#### 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

#### clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## DISASTER CAPABILITY PLAN - PRINCIPLES AND CONTENTS

### The Disaster Capability 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.

### The Disaster Capability Plan shall be invoked only upon the occurrence of a Disaster.

### The Disaster Capability Plan shall include the following:

#### the technical design and build specification of the Disaster Capability System;

#### details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Capability System and the provision of the Disaster Capability Services and any testing of the same including but not limited to the following:

##### data centre and disaster capability site audits;

##### backup methodology and details of the Supplier's approach to data back‑up and data verification;

##### identification of all potential disaster scenarios;

##### risk analysis;

##### documentation of processes and procedures;

##### hardware configuration details;

##### network planning including details of all relevant data networks and communication links;

##### invocation rules;

##### Service recovery procedures; and

##### steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

#### any applicable Performance Indicators with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Capability Plan;

#### details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;

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

#### testing and management arrangements.

## REVIEW AND AMENDMENT OF THE BCDC PLAN

### The Supplier shall review the BCDC Plan (and the risk analysis on which it is based):

#### on a regular basis and as a minimum once every six (6) months;

#### within three (3) calendar months of the BCDC Plan (or any part) having been invoked pursuant to Paragraph 8; and

#### where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) 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.

### Each review of the BCDC Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDC 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 BCDC Plan or the last review of the BCDC 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 BCDC Plan. The review shall be completed by the Supplier within the period required by the BCDC Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDC Plan, provide to the Authority a report (a **“Review Report”**) setting out:

#### the findings of the review;

#### any changes in the risk profile associated with the Services; and

#### the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDC 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.

### Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:

#### review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and

#### notify the Supplier in writing that it approves or rejects the Review Report and the Supplier’s Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

### If the Authority rejects the Review Report and/or the Supplier’s Proposals:

#### the Authority shall inform the Supplier in writing of its reasons for its rejection; and

#### 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 6.3 and this Paragraph 6.4 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.

### 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.

## TESTING OF THE BCDC PLAN

### The Supplier shall test the BCDC Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDC 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 BCDC Plan.

### If the Authority requires an additional test of the BCDC 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 BCDC Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDC Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

### The Supplier shall undertake and manage testing of the BCDC 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.

### 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 completion of the test.

### The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:

#### the outcome of the test;

#### any failures in the BCDC Plan (including the BCDC Plan's procedures) revealed by the test; and

#### the Supplier's proposals for remedying any such failures.

### Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re‑testing of the BCDC Plan) to remedy any failures in the BCDC 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.

### For the avoidance of doubt, the carrying out of a test of the BCDC Plan (including a test of the BCDC Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

### The Supplier shall also perform a test of the BCDC Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## INVOCATION OF THE BCDC PLAN

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

### Where the BCDC Plan is invoked, the Supplier shall grant to the Authority priority treatment in respect of the Services compared to the best terms offered by the Supplier to any customer who purchases the same or similar services to the Services. In particular, the Supplier warrants, represents and undertakes that no other customer to whom the Supplier supplies, or offers to supply, services shall be in a position to prevent the Authority from receiving the entire benefit of the processes and procedures within the BCDC Plan.

### Upon the Authority's written request, the Supplier shall obtain a written statement from an independent audit agent and which is signed and confirmed by the Supplier, certifying that the Supplier has been in compliance with paragraph 8.2 since the Effective Date or last certification.

### If the Supplier does not provide such written statement within 30 days of having received the Authority's request or provides a statement which does not confirm compliance, irrespective of the reason, the Supplier shall be deemed to be non‑compliant with paragraph 8.2 and the Authority shall be entitled to immediately treat such non-compliance as a Supplier Termination Event.

# SCHEDULE 8.7

CONDUCT OF CLAIMS

## Conduct of Claims

## INDEMNITIES

### This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).

### 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 Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.

### 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.

### With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

#### the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

#### the Indemnifier shall not bring the name of the Beneficiary into disrepute;

#### 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

#### the Indemnifier shall conduct the Claim with all due diligence.

### 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 Agreement if:

#### the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

#### 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

#### the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## SENSITIVE CLAIMS

### 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.

### 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.

## RECOVERY OF SUMS

### 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:

#### 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

#### the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## MITIGATION

### 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 9.1

STAFF TRANSFER

Staff Transfer

## DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “Admission Agreement” | An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services; |
| “Eligible Employee” | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement; |
| “Fair Deal Employees” | those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal); |
| “Former Supplier” | a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor); |
| “New Fair Deal” | the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date; |
| “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; |
| “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; |
| “Schemes” | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 ( and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |
| “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, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:   1. their ages, dates of commencement of employment or engagement, gender and place of work; 2. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; 3. the identity of the employer or relevant contracting Party; 4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; 5. their wages, salaries, bonuses and profit sharing arrangements as applicable; 6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; 7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); 8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; 9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and 10. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| “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. |

## INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

# PART A: Transferring Authority Employees at commencement of Services

## RELEVANT TRANSFERS

### The Authority and the Supplier agree that:

#### the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

#### as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

### The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

## AUTHORITY INDEMNITIES

### Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

#### any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;

#### the breach or non-observance by the Authority before the Relevant Transfer Date of:

##### any collective agreement applicable to the Transferring Authority Employees; and/or

##### any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

#### any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

#### 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:

##### in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

##### in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

#### a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;

#### any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

#### any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

### The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

#### arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

#### arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

### If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

#### the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and

#### the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

### If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

### If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

#### no such offer of employment has been made;

#### such offer has been made but not accepted; or

#### the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

### The indemnity in Paragraph 2.6:

#### shall not apply to:

##### 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

##### any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

#### shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

### If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

## SUPPLIER INDEMNITIES AND OBLIGATIONS

### Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

#### any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

#### the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

##### any collective agreement applicable to the Transferring Authority Employees; and/or

##### any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

#### any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

#### any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

#### any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

#### 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:

##### in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

##### in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

#### 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 Authority Employees in respect of the period from (and including) the Relevant Transfer Date;

#### any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

#### a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

### The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority’s failure to comply with its obligations under the Employment Regulations.

### The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

## INFORMATION

### The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

### The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

### The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

#### the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

#### HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions” of 1999;

#### HM Treasury's guidance “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or

#### the New Fair Deal.

### Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

## PENSIONS

### The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

# ANNEX TO PART A: PENSIONS

## PARTICIPATION

### The Supplier undertakes to enter into the Admission Agreement.

### The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

### The Supplier and the Authority agree:

#### that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;

#### notwithstanding sub-paragraph 1.3(a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

#### that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:

##### commits an irremediable breach of the Admission Agreement; or

##### commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it.

### The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes, including without limitation MyCSP’s on-boarding costs.

## FUTURE SERVICE BENEFITS

### The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

### The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

### The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## FUNDING

### The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

### The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## PROVISION OF INFORMATION

### The Supplier and the Authority respectively undertake to each other:

#### to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

#### not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## INDEMNITY

### The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## EMPLOYER OBLIGATION

### The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## SUBSEQUENT TRANSFERS

### The Supplier shall:

#### not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

#### provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

#### for the period either

##### after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

##### after the date which is two (2) years prior to the date of expiry of this Agreement,

### ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## BULK TRANSFER

### Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

#### fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme’s actuary or by the Government Actuary’s Department;

#### instruct any such broadly comparable pension scheme’s actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

#### allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (**"the Shortfall"**), the Supplier agrees to pay the Shortfall to the Schemes;

#### indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

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# PART B: Transferring Former Supplier Employees at commencement of Services

## RELEVANT TRANSFERS

### The Authority and the Supplier agree that:

#### the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

#### as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

### The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

## FORMER SUPPLIER INDEMNITIES

### Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

#### any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

#### the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

##### any collective agreement applicable to the Transferring Former Supplier Employees; and/or

##### any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

#### 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:

##### in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

##### in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

#### a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

#### any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

#### any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

### The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

#### arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

#### arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

### If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

#### the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and

#### the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

### If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

### If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

#### no such offer of employment has been made;

#### such offer has been made but not accepted; or

#### the situation has not otherwise been resolved,

### the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

### The indemnity in Paragraph 2.6:

#### shall not apply to:

##### 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

##### any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

#### shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

### If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

## SUPPLIER INDEMNITIES AND OBLIGATIONS

### Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

#### any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

#### the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

##### any collective agreement applicable to the Transferring Former Supplier Employee; and/or

##### any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

#### any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

#### any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

#### any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;

#### 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:

* + - 1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
      2. in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

#### a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

#### any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

#### a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

### The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.

### The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

## INFORMATION

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

## PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

### The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

#### the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

#### HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

#### HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or

#### the New Fair Deal.

### Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## PROCUREMENT OBLIGATIONS

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

## PENSIONS

### The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

# ANNEX TO PART B

**PENSIONS**

## PARTICIPATION

### The Supplier undertakes to enter into the Admission Agreement.

### The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

### The Supplier and the Authority agree:

#### that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;

#### notwithstanding sub-paragraph 1.3 (a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

#### that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:

##### commits an irremediable breach of the Admission Agreement; or

##### commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it.

### The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation MyCSP’s on-boarding costs.

## FUTURE SERVICE BENEFITS

### If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

### If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

### The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

* 1. The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## FUNDING

### The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

### The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## PROVISION OF INFORMATION

### The Supplier and the Authority respectively undertake to each other:

#### to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

#### not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## INDEMNITY

### The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## EMPLOYER OBLIGATION

### The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## SUBSEQUENT TRANSFERS

### The Supplier shall:

#### not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

#### provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

#### for the period either:

* + - 1. after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
      2. after the date which is two (2) years prior to the date of expiry of this Agreement,

### ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## BULK TRANSFER

### Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

#### fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme’s actuary or by the Government Actuary’s Department;

#### instruct any such broadly comparable pension scheme’s actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

#### allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (**"the Shortfall"**), the Supplier agrees to pay the Shortfall to the Schemes;

#### indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

# PART C: No transfer of employees at commencement of Services

## PROCEDURE IN THE EVENT OF TRANSFER

### The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

### 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 or the Acquired Rights Directive then:

* + 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
    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.

### If an offer referred to in Paragraph 1.2(b) 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.

### If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

* + 1. no such offer of employment has been made;
    2. such offer has been made but not accepted; or
    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.

## INDEMNITIES

### 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:

* + 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
    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.

### 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, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

### 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.

### The indemnities in Paragraph 2.1:

* + 1. shall not apply to:
       1. 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

* + - 1. 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
    1. shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

## PROCUREMENT OBLIGATIONS

### 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: Employment Exit Provisions

## PRE-SERVICE TRANSFER OBLIGATIONS

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

#### receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

#### receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

#### the date which is 12 months before the end of the Term; and

#### 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, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

### 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:

#### the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

#### the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).

### 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.

### 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.

### From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub‑contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

#### replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

#### make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

#### 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;

#### 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;

#### 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

#### 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.

### During the Term, the Supplier shall provide, and shall procure that each Sub‑contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

#### the numbers of employees engaged in providing the Services;

#### the percentage of time spent by each employee engaged in providing the Services;

#### the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and

#### a description of the nature of the work undertaken by each employee by location.

### The Supplier shall provide, and shall procure that each Sub‑contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

* + 1. the most recent month's copy pay slip data;
    2. details of cumulative pay for tax and pension purposes;
    3. details of cumulative tax paid;
    4. tax code;
    5. details of any voluntary deductions from pay; and
    6. bank/building society account details for payroll purposes.

## EMPLOYMENT REGULATIONS EXIT PROVISIONS

### 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 Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

### The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

### 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:

#### 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;

#### the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

##### any collective agreement applicable to the Transferring Supplier Employees; and/or

##### 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;

#### any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

#### 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:

##### in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

##### in relation to any employee who is not identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

#### a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

#### 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 Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

#### 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.

### 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:

#### 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

#### arising from the Replacement Supplier’s failure, and/or Replacement Sub-contractor’s failure, to comply with its obligations under the Employment Regulations.

### If any person who is not identified in the Supplier’s Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier’s Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

#### 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

#### the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

### 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.

### If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

#### no such offer of employment has been made;

#### such offer has been made but not accepted; or

#### the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### 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.

### The indemnity in Paragraph 2.8:

#### shall not apply to:

##### 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 Replacement Supplier and/or Replacement Sub-contractor; or

##### 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

#### shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

### 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.

### The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier’s Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

#### the Supplier and/or any Sub-contractor; and

#### the Replacement Supplier and/or the Replacement Sub-contractor.

### 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.

### Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

#### 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;

#### the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

##### any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List ; and/or

##### 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;

#### 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;

#### any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier’s Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

#### 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;

#### 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:

##### in relation to any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

##### in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

#### 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

#### 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.

### The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

# ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

# SCHEDULE 9.2

KEY PERSONNEL

# SCHEDULE 9.2

KEY PERSONNEL

*Redacted*

**SCHEDULE 10**

**GUARANTEE**

*Redacted*

**SCHEDULE 11**

**COLLABORATION**

**SCHEDULE** **11**

**COLLABORATION**

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**SCHEDULE 11**

**MULTI PARTY PERFORMANCE MANAGEMENT AND GOVERNANCE**

# DEFINITIONS

### In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Authority Business Objectives"** | has the meaning given in Paragraph 2.1 (*Introduction*) of this Schedule 11; |
| **"Required Behaviours"** | means the behaviours set out in Attachment 1 to Annex 1 (*Required Behaviours*) to this Schedule 11; and |
| **"Status"** | means the Supplier’s status for the purposes of determining eligibility for the incentives set out in Paragraph 5, as determined by the Authority in accordance with Paragraph 3.3 of Annex 1 (*Required Behaviours*) of this Schedule 11, comprising:  (a) Bronze Status;  (b) Silver Status; and  (c) Gold Status. |

# INTRODUCTION

### This Schedule 11 sets out the obligations of the Parties to work cooperatively and collaboratively with each other and with the Other Suppliers to achieve:

#### great user experience (internal and external);

#### pace and flexibility in delivery;

#### great security and resilience;

#### value for money; and

#### avoidance of "lock-in",

(**"Authority Business Objectives"**)

# NOTIFICATION OF FAILURE

### The Parties shall at all times act in accordance with the principle of "fix first, settle later", requiring that each Party shall concentrate on solving a problem as expeditiously and cost effectively as possible and leave any Disputes as to which Party or Other Supplier is responsible, which Party or Other Supplier should bear the cost of fixing the problem and any associated legal issues until resolution of the relevant problem.

### Where the Supplier fails or becomes aware that it is likely to fail to comply with any obligation under this Agreement and that failure could impact on the performance of the services by any Other Supplier(s) or the Authority, the Supplier shall as soon as is reasonably practicable notify the Authority of such failure or likely failure.

### Where the Supplier becomes aware of an event or incident that that could impact on the performance of its own Services or the performance of the services by any Other Supplier(s) or the Authority, the Supplier shall as soon as is reasonably practicable notify the Authority of such failure or likely failure.

# REQUIRED BEHAVIOURS

### The Parties shall comply with the provisions of Annex 1 (*Required Behaviours*) to this Schedule 11.

# SUPPLIER STATUS

### The Supplier shall not be entitled to describe itself as a supplier to the Authority (including, without limitation, in any press announcements, promotions or marketing) unless:

#### such description includes the Supplier’s Status, as applicable during the relevant period; and

#### the Supplier has obtained the prior written consent of the Authority in accordance with Clause 24.1 (*Publicity and Branding*).

### Subject to compliance with the Authority's policies and applicable Law, the Supplier shall be entitled to the incentives set out in Table 1 below in accordance with the Supplier’s Status during the relevant period.

**Table 1: Incentives**

|  |  |  |
| --- | --- | --- |
| **Gold Status** | **Silver Status** | **Bronze Status** |
| * The Supplier shall be entitled to describe itself as a "Gold Supplier" to the Authority. * The Authority shall, on reasonable request of the Supplier, support the Supplier in improving cross-government ICT services. * The Authority shall, on reasonable request of the Supplier, provide Authority executives as guest speakers at Supplier events. * The Supplier shall be entitled to include the Authority as a reference in any tenders submitted by the Supplier. * The Supplier shall be entitled to use the Authority as a reference site. * The Authority shall make available opportunities for Supplier Personnel to be seconded to the Authority. * The Authority shall work with the Supplier to support opportunities for Authority personnel to be seconded to the Supplier. * The Authority shall, on reasonable request of the Supplier, act as co-author with the Supplier for case studies and/or white papers. | * The Supplier shall be entitled to describe itself as a "Silver Supplier" to the Authority. * The Supplier shall be entitled to include the Authority as a reference in any tenders submitted by the Supplier. * The Authority shall make available opportunities for Supplier Personnel to be seconded to the Authority. * The Authority shall work with the Supplier to support opportunities for Authority personnel to be seconded to the Supplier. | * The Supplier shall be entitled to describe itself as a "Bronze Supplier" to the Authority. |

# CHANGES TO SCHEDULE 11

### The Authority shall be entitled amend this Schedule 11 (*Collaboration*) by giving written notice to the Supplier. Subject to Paragraph 6.2 below, any such changes shall take effect from the date specified in the notice given pursuant to this Paragraph 6.1.

### Any changes to the Required Behaviours made pursuant to this Paragraph 6 shall take effect no earlier than the commencement of the quarter immediately following the date of the notice given pursuant to Paragraph 6.1.

Annex 1: Required Behaviours

## DEFINITIONS

### In this Annex, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Service Provider"** | the Supplier, all Other Suppliers and the Authority; |
| **"Service Provider Personnel"** | all directors, officers, employees, agents, consultants and contractors of the Service Providers; and |
| **"Qualifying Supplier"** | any supplier to the Authority (including the Supplier) that has entered into an agreement incorporating an annex that is identical or substantially similar to Annex 1 (*Required Behaviours*). |

## INTRODUCTION

### The Parties acknowledge that the adoption of the Required Behaviours may be a transformational exercise taking place over a series of months.

## ASSESSMENT OF PERFORMANCE AGAINST THE REQUIRED BEHAVIOURS

### Within five (5) Working Days following the end of each quarter, each Qualifying Supplier shall provide to the Authority:

#### a self-assessment of its own performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*)of this Annex 1; and

#### completed questionnaires for the Authority and each of the other Qualifying Suppliers, each consisting of an assessment of the relevant organisation’s performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*)of this Annex 1.

### Within five (5) Working Days following the end of each quarter, the Authority shall complete:

#### a self-assessment of its own performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*)of this Annex 1; and

#### completed questionnaires for each of the Qualifying Suppliers, each consisting of an assessment of the relevant Qualifying Supplier’s performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*)of this Annex 1.

### The Authority shall aggregate all assessments provided to it by the Qualifying Suppliers pursuant to Paragraph 3.1 (or equivalent under the relevant agreement) together with the Authority’s assessments completed pursuant to Paragraph 3.2 within a single aggregated report, and shall:

#### consider and review the relevant assessments;

#### give each Qualifying Supplier the opportunity to attend a closed meeting with the Authority to receive detailed feedback relating to its score and comment on such feedback;

#### moderate the scores and determine for the Authority and each Qualifying Supplier, at the Authority’s sole discretion, a final moderated Required Behaviours score for the applicable quarter (**"Final Required Behaviours Scores"**); and

#### determine for each Qualifying Supplier, at the Authority’s sole discretion, whether the Supplier shall qualify for Gold Status, Silver Status or Bronze Status for the forthcoming quarter.

### Within twenty (20) Working Days following the end of each quarter, the Authority shall provide to all Qualifying Suppliers a report setting out:

#### the Final Required Behaviours Scores for the Authority and each of the Qualifying Suppliers; and

#### the Status for each of the Qualifying Suppliers (such Status to apply from the date of the report until the next Status determination pursuant to this Paragraph 3).

**Attachment 1: Required Behaviours**

## TAKING RESPONSIBILITY

### Each Party shall improve its working relationships with the other Service Providers taking responsibility to fulfil collaboratively agreed commitments to support the delivery of the Authority’s objectives (as notified to the Supplier from time to time) through leadership, awareness, information exchange and joint problem solving.

### The Parties shall demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment, in particular by establishing a strong direction and a persuasive future vision.

### The Supplier shall seek to understand the Authority's objectives and goals in relation to the end to end services (including delivery of the Authority's Next Generation Performance Measures) in order to support and improve the Parties’ collaborative relationships and behaviours.

### The Parties shall be open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of the Authority's objectives.

### The Parties shall demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later".

### **CONSISTENCY AND CONVERGENCE**

### Each Party acknowledges that adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with other Service Providers will support the successful delivery of the Services.

### The Supplier shall adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services, including by:

#### where appropriate, adopting such standard terminology as is used already by the Authority and the other Service Providers;

#### using recognised industry standard terminology wherever possible, in preference to terminology that describes the Supplier’s own products, services, tools and processes; and

#### working with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services; and

#### demonstrating an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improved value, using consistent end to end service delivery processes.

### The Parties shall work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements.

### The Supplier shall demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than “re-inventing wheels” in order to facilitate the efficient and effective delivery of the Authority's objectives.

### **OPENNESS AND COMMUNICATION**

### The Parties shall provide cooperation, support, information and assistance to the other Service Providers in a proactive, transparent and open way and in a spirit of trust and mutual confidence, to achieve the Authority's objectives, including the effective delivery of the Next Generation Performance Measures.

### The Parties shall act as "one team" with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver the Authority’s objectives (as notified to the Supplier from time to time), including by:

#### maintaining a genuine, non‑defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that arise;

#### engaging in regular and open communication with the other Service Providers and with other Delivery Groups and avoiding working in "silos";

#### demonstrating a willingness and ability to:

##### listen to other parties’ concerns and consider in good faith all constructive feedback without triggering escalation; and

##### provide constructive feedback to other Service Providers where appropriate; and

#### behaving in a supportive and considerate manner to all Service Provider Personnel, regardless of organisation.

### The Parties shall identify and adopt appropriate types and styles of communications, behaviours and engagement activities. This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote the Authority's objectives (as notified to the Supplier from time to time).

### The Parties shall promptly and proactively:

#### identify factors which may compromise or enhance the solution or performance;

#### analyse the impact and likelihood of such factors;

#### escalate and mitigate emerging risks; and

#### exploit opportunities to enhance the solution or performance.

### **DELIVERY AND INNOVATION**

### Each Party shall individually and collectively with the other Service Providers work to deliver the Authority’s objectives (as notified to the Supplier from time to time) and achieve best value and ensure the orderly provision of seamless end to end services.

### The Parties shall encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle.

### The Supplier shall demonstrate a drive to continually strive to deliver more in order to support the Authority to achieve its ambition to become the most digitally advanced tax authority in the world.

### The Supplier shall act responsively to change and shall proactively identify situations where change may be appropriate and empower staff to consider and take managed risks.

### Each Party shall recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition.

**Attachment 2: Template Required Behaviours Questionnaire**

**Taking Responsibility**

Q1. Does the Service Provider demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment? In particular, does the Service Provider establish a strong direction and a persuasive future vision?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q2. Does the supplier seek to understand HMRC's objectives and goals in relation to the end to end services (including delivery of HMRC Next Generation Performance Measures) in order to support and improve the Parties' collaborative relationships and behaviours?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.3 Is the Service Provider open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of HMRC’s objectives?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.4 Does the Service Provider demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later"?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

**Consistency and Convergence**

Q.5 Does the supplier adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services? In particular, does the Service Provider:

* + where appropriate, adopt such standard terminology as is used already by HMRC and the other Service Providers;
  + use recognised industry standard terminology wherever possible, in preference to terminology that describes the supplier's own products, services, tools and processes; and
  + work with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.6 Does the Service Provider demonstrate an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improved value, using consistent end to end service delivery processes?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.7 Does the Service Provider work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.8 Does the supplier demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than “re-inventing wheels” in order to facilitate the efficient and effective delivery of HMRC's objectives.

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

**Openness and Communication**

Q.9 Does the Service Provider act as "one team" with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver HMRC’s objectives, including by:

* + Maintaining a genuine, non-defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that may arise:
  + Engaging in regular and open communication with the other Service Providers and with other Delivery Groups and avoiding working in “silos”:
  + Demonstrating a willingness and ability to:
    - Listen to other parties' concerns and consider in good faith all constructive feedback without triggering escalation: and
    - Provide constructive feedback to other Service Providers where appropriate
  + Behaving in a supportive and considerate manner to all Service Provider personnel, regardless of organisation

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.10 Does the Service Provider identify and adopt appropriate types and styles of communications, behaviours and engagement activities? This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote HMRC’s objectives.

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.11 Does the Service Provider promptly and proactively:

* + identify factors which may compromise or enhance the solution or performance;
  + analyse the impact and likelihood of such factors;
  + escalate and mitigate emerging risks; and
  + exploit opportunities to enhance the solution or performance.

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

**Delivery and Innovation**

Q.12 Does the Service Provider encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.13 Does the supplier demonstrate a drive to continually strive to deliver more in order to support HMRC to achieve its ambition to become the most digitally advanced tax authority in the world.

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.14 Is the supplier responsive to change and proactive in identifying situations where change may be appropriate? Does the supplier empower staff to consider and take managed risks?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |

Q.15 Does the Service Provider recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition?

|  |  |
| --- | --- |
| *Level 0* |  |
| *Level 1* |  |
| *Level 2* |  |
| *Level 3* |  |
| *Level 4* |  |