

OFFICIAL - SENSITIVE - COMMERCIAL

HMRC Standard Goods and Services Model Contract
TERMS AND CONDITIONS

DATED

01/04/2023

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

and

(2) CAMPDEN BRI (CHIPPING CAMPDEN) LIMITED

AGREEMENT

relating to

Laboratory Analysis and Tariff
Classification Services

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12. Clustering

THIS AGREEMENT is made on

01/04/2023

BETWEEN:

- (1) **THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the "Authority"); and
- (2) **Campden BRI (Chipping Campden) Limited** a company registered in England and Wales under company number 3836922 whose registered office is at Campden BRI (Chipping Campden) Limited, station Road, Chipping Campden, GL55 6LD (the "Supplier"),

(each a "Party" and together the "Parties").

INTRODUCTION

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**1 DEFINITIONS AND INTERPRETATION**

- 1.1 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.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) 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;
 - (e) 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";

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- (f) 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;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided and save for references in Schedule 10 (*Guarantee*):
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) 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;
 - (i) any reference to a time of day (unless expressly specified otherwise) is to London time;
 - (j) 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; and
 - (k) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 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.
- 1.4 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:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;
 - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
 - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
 - (f) any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.5 The Schedules and their Annexes form part of this Agreement.

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

2 DUE DILIGENCE

2.1 The Supplier acknowledges that:

- (a) 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;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to the processes and requirements of the Authority;
- (d) it has entered into this Agreement in reliance on its own due diligence.

2.2 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:

- (a) any unsuitable aspects of the Authority System;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

3.1 The Supplier represents and warrants that:

- (a) 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;
- (b) this Agreement is executed by its duly authorised representative;
- (c) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this Agreement;
- (d) it has notified the Authority in writing 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 or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (e) 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 Selection Questionnaire 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

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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;

- (f) 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;
- (g) 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 Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
- (h) it has all necessary rights in and to the IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (i) any Cost, Supplier Profit or Supplier Profit Margin in the Cost Model is a true and accurate reflection of such Cost, Supplier Profit or 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 Models;
- (j) 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;
- (k) 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 the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date;
- (l) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and
- (a) that neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is 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.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue, or is misleading, it shall

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immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

SECTION B - THE SERVICES**4 TERM****4.1 This Agreement shall:**

- (a) come into force on the Effective Date; and
- (b) 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 or any Extension Period (as applicable).

Extension of the Initial Term

- 4.2 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).
- 4.3 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.

5 SERVICES**Standard of Services****5.1 The Supplier shall provide:**

- (a) any Mobilisation from (and including) the Mobilisation Commencement Date; and
- (b) the Operational Services, in each case, from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement,

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and, without prejudice to Clause 1.4 (*order of precedence*), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description.

5.3 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Quality Standards;
 - (iv) the Baseline Security Requirements;
 - (v) 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)(iv);
- (b) where applicable, maintain accreditation with the relevant Quality Standards authorisation body; and
- (c) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.35.3(a)(i) to 5.35.3(a)(iv), 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

5.5 The Supplier shall:

- (a) 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;
- (b) save to the extent that the Authority is expressly required to obtain and maintain the same under this Agreement 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;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance

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of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority; and

- (ii) 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;
 - (d) 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;
 - (e) 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;
 - (f) co-operate with any 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 provide services to the Authority and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
 - (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
 - (h) 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;
 - (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - (j) 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
 - (k) 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 in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority.
- 5.6 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.
- 5.7 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:
- (a) 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

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other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

- (b) 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
- (c) 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.

Software

- 5.8 The Supplier shall ensure that the Software (if any) complies with Good Industry Practice in all respects including in respect of availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management.
- 5.9 The Supplier shall comply with and feed into the Authority's incident and problem management processes and procedures in respect of any Software.

Continuing obligation to provide the Services

- 5.10 The Supplier shall continue to perform all of its obligations under this Agreement, and shall not suspend the supply of the Services, notwithstanding:
 - (a) any withholding of the Service Charges due to deduction of any Deductions;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) 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

- 5.11 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.
- 5.12 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 Contract Change will have on the relevant Optional Services.
- 5.13 Following receipt of the Authority's notice pursuant to Clause 5.11:
 - (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified

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to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

- (b) the Supplier shall mobilise and, if applicable, test the relevant Optional Services in accordance with a mobilisation plan which the Parties shall agree in respect of such Optional Services ("**Optional Services Mobilisation Plan**");
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Part B of Schedule 7.1 (*Charges and Invoicing*); and
- (d) the Supplier shall, from the date agreed in the Optional Services Mobilisation Plan 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 KPIs applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Scope

5.14 The Supplier acknowledges and agrees that:

- (a) its relationship with the Authority is not exclusive; and
- (b) 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.

Conflicts of Interest

- 5.15 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any member of the Supplier Personnel and the duties owed to the Authority under the provisions of the Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.
- 5.16 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a material breach of this Agreement and, accordingly, a Supplier Termination Event.

6 MOBILISATION AND PROJECTS**Mobilisation Plan and Delays**

- 6.1 The Parties shall comply with the Mobilisation Plan and provisions of Schedule 6.1 (*Mobilisation*) in relation to the agreement and maintenance of the Mobilisation Plan.
- 6.2 The Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall apply in respect of

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the steps to be taken by the Parties.

Testing and Achievement of Milestones

6.4 In respect of any Milestone Payments:

- (a) the Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone has been Achieved; and
- (b) no Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

Orders

- 6.5 The Authority may order Goods and/or Services in accordance with Schedule 6.3 (*Projects and Ordering*), if such Schedule is used.

Quality Plans

- 6.6 The Supplier shall provide Quality Plans in accordance with Schedule 2.3 (*Standards*), if such Schedule is used.

7 PERFORMANCE INDICATORS

- 7.1 The Parties shall comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to KPIs and performance monitoring.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services. The Parties shall provide each other with any information reasonably required to meet this objective.
- 8.2 The Supplier shall, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 8.3 The Parties shall comply with the provisions of Part A (Continuous Improvement) of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to the Supplier's ongoing obligation of continuous improvement.

9 ASSETS, EQUIPMENT, ACCOMMODATION AND SUPPLY OF GOODS.

Assets

- 9.1 The Supplier shall record all of the Assets that will be used at the Authority's premises as at the Commencement Date in Schedule 4.5 (*Assets*), if such Schedule is used, and shall maintain a Register of all of the Assets in accordance with Schedule 8.5 (*Exit Management*).

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Supplier Equipment

- 9.2 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.
- 9.3 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.
- 9.4 Subject to any express provision of any Service Continuity 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.

Supply of Goods

- 9.5 Where, as part of the Services, the Supplier is to sell Goods to the Authority:
- (a) the relevant Goods and their prices shall be as set out in Schedule 7.1 (*Charges and Invoicing*);
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - (c) 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;
 - (d) 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
 - (e) 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.

Accommodation

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- 9.6 Where, in the course of providing the Services, any Supplier Personnel are to be based at Authority Premises, the Parties shall comply with the provisions of Schedule 2.6 (*Accommodation*), if such Schedule is used.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**10 FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 10.1 Subject to Clause 10.2 and Clause 10.3, 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*).
- 10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall:
- (a) comply with UK GAAP or the International Financial Reporting Standard; and
 - (b) procure discrete purchase order numbers from the Authority for each Service and/ or Order prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:
 - (i) the Supplier does so at its own risk; and
 - (ii) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.
 - (c) submit each invoice and any Supporting Documentation required to be submitted in accordance with this Clause 10, as directed by the Authority from time to time, via the Authority's electronic transaction system.
- 10.3 To facilitate payment, the Supplier shall use the electronic transaction system chosen by the Authority and shall:
- (a) register for the electronic transaction system in accordance with the instructions of the Authority;
 - (b) allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;
 - (c) designate a Supplier representative as the first point of contact with the Authority for system issues; and
 - (d) provide such data to the Authority as the Authority reasonably deems necessary for the effective operation of the system including, but not limited to, electronic catalogue information.
- 10.4 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

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(Transparency and Freedom of Information), 23 (Protection of Personal Data) and Clause 30 (Step In Rights).

- 10.5 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

- 10.6 The Authority may:

- (a) 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; and/or
- (b) exercise any right it may have pursuant to Schedule 2.2 (*Performance Levels*) to withhold payment of a proportion of the Service Charges as Compensation for Unacceptable KPI Failure,

on giving 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

- 10.7 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to savings initiatives in relation to the provision of the Services.

Financial Distress

- 10.8 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

- 10.9 All amounts stated 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.
- 10.10 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 10.11 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 or Sub-contractor.

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- 10.12 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.
- 10.13 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:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) 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
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.14 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.
- 10.15 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.
- 10.16 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.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15, for the purpose of the collection and management of revenue for which the Authority is responsible.

Use of Off-shore Tax Structures

- 10.18 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-

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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.

- 10.19 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.
- 10.20 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.
- 10.21 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.

Competitive Terms

- 10.22 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 or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 10.23 If the Authority exercises either of its options pursuant to Clause 10.22, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 10.24 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any

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licence fees or early termination charges.

Payment of Sub-contractors

- 10.25 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 10.26 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority 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).
- 10.27 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.

The Models

- 10.28 The Supplier shall:
- (a) complete each iteration of the Models using reasonable skill and care;
 - (b) prepare each iteration of the Models using the same methodology, software package, layout and format as that used for the initial iteration of the Models and ensure it does not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;
 - (c) ensure that each iteration of the Models a true and fair reflection of the contents therein, is accurate and not misleading; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Models.
- 10.29 All changes to the Models shall be auditable and implemented and documented under formal version control in accordance with the Change Control Procedure.

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.
- 11.2 Each Party shall appoint a representative in accordance with this Clause 11 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 and the management of the Services.
- 11.3 The initial Supplier Representative shall be the person named as contract manager for the Supplier in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used, or Schedule 8.1 (*Governance*).

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- 11.4 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.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

Audit Rights

- 12.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (b) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (c) to verify any certificate of costs required to be provided pursuant to Schedule 7.1 (Charges and Invoicing) and, if Schedule 7.5 (*Financial Reports and Audit Rights*) is used, any Open Book Data and the integrity and content of any Rolling Financial Statement (as such terms are defined in Schedule 7.5);
 - (d) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

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- (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) to inspect the service delivery environment (or any part of it);
- (n) to review any information relating to any testing required pursuant to Schedule 6.2 (*Testing Procedures*);
- (o) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the Supplier's compliance with the Quality Standards;
- (p) to inspect the Authority Assets for the purposes of ensuring that the Authority Assets are secure and that any register of assets (including the Registers) is accurate, complete and up to date; and/or
- (q) to review the integrity, confidentiality and security of the Authority Data.

12.2 Except where:

- (a) an audit is imposed on the Authority by a regulatory body;
- (b) where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement; or
- (c) an audit is required to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security

the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

12.3 Nothing in Clause 12.2 shall prevent or restrict the Authority's right to require that the Supplier provide financial Management Information at such frequency as determined by the Authority and on a free of charge basis.

12.4 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

Conduct of Audits

12.5 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

12.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand

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provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

12.7 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable KPIs at a level of detail sufficient to verify compliance with the KPIs.

12.8 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.

12.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 12.1 to 12.12, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

Use of Supplier's Internal Audit Team

12.10 As an alternative to the Authority's right pursuant to Clause 12.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 12.1.

12.11 Following the receipt of a request from the Authority under Clause 12.10 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and
- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

Response to Audits

12.12 If an audit undertaken pursuant to Clause 12.1 or Clause 12.10 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Model, the Supplier shall promptly rectify the error;

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- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Reports, Records and Open Book Data

12.13 The Supplier shall comply with the provisions of:

- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
- (b) Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used, in relation to open book accounting and the provision of financial information and reports.

13 CHANGE**Change Control Procedure**

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

Change in Law

- 13.2 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.
- 13.3 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**14 SUPPLIER PERSONNEL**

14.1 The Supplier shall:

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- (a) 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;
 - (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice, BPSS and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
 - (iii) 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
 - (iv) meet the training and awareness requirements set out in Paragraph 1.2(e) of Schedule 2.8 (*Data Processing and List of Sub-Processors*);
 - (c) 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;
 - (d) 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;
 - (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (f) 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;
 - (g) bear the familiarisation and other costs associated with any replacement of any Supplier Personnel;
 - (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement; and
 - (i) pay the Supplier Personnel the Mandatory Wage as required by Law.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

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Key Personnel

14.3 The terms of Schedule 9.2 (*Key Personnel*) shall apply, if such Schedule is used.

Employment Indemnity

14.4 The Parties agree that:

- (a) 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
- (b) 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

14.5 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:

- (a) 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;
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.5(a) or why Clause 14.5(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 14.5 then this shall constitute a Supplier Termination Event.

14.6 The Authority may internally share any information which it receives under Clause 14.5(c).

Staff Transfer

14.7 The Parties agree that:

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- (a) 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:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 (*Staff Transfer*) may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- (c) Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

- 15.1 The Parties shall comply with the provisions of Schedule 4.3 (*Notified and Key Sub-contractors*) in relation to the appointment of Sub-contractors and the terms of Sub-contracts.

Exclusion of Sub-contractors

- 15.2 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

- 15.3 The Authority, at its sole discretion, may require the Supplier to terminate a Sub-contract where:
- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority into disrepute by

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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 Sub-contractor's obligations in relation to the Services or otherwise;

- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (d) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*); and/or
- (e) the relevant Sub-Contractor has failed to comply with the terms of its Sub-Contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
- (f) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.2 (*Exclusion of Sub-contractors*); and or
- (g) there is a change of Control of the relevant Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 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.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors: and
- (b) 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

- 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.
- 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 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.

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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 to enable the Supplier to provide the Services during the Term.

17 LICENCES GRANTED BY THE SUPPLIER

17.1 The Supplier hereby grants to the Authority and the Government Controlled Company a perpetual, royalty free and non-exclusive licence allowing them to use, load, execute, store, transmit, display and copy:

- (a) the Supplier Background IPR; and
- (b) the Third Party IPR.

17.2 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 solely for the purpose of providing services to the Authority or the Government Controlled Company.

17.3 The licences in Clause 17.1:

- (a) are granted for any purpose relating to the Services (or substantially equivalent services); or
- (b) are granted for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (c) includes the right to create an archival copy and a back-up copy;
- (d) 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 is under a contractual obligation to the Authority to comply with confidentiality obligations that are broadly equivalent to those of the Authority pursuant to Clause 21 (Confidentiality);
- (e) includes the right for the Authority to:
 - (i) 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
 - (ii) 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

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still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).

- 17.6 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.
- 17.13 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
- (a) the Authority Background IPR;
 - (b) the Authority's documentation, processes and procedures;
 - (c) the Authority's Know-How; and
 - (d) the Authority Data.
- 18.2 The licence granted in Clause 18.1:
- (a) 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
 - (b) 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.
- 18.3 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.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to

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continue using the relevant item which is subject to the IPRs Claim; or

- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

19.3 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:

- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, 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 Project Specific IPRs that are in the nature of software.

19A.2 The Supplier hereby warrants that any Project Specific IPRs that 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 in any way to compromise the operation, running and security of the Project Specific IPRs or the Authority System;
- (b) have been developed using reasonable endeavours to ensure that their publication by the Authority shall not cause any harm or damage to any party using them and that they 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 contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) can be published by the Authority as Open Source without breaching the rights of any third party; and

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- (e) will be supplied in a format suitable for publication as Open Source no later than the date notified by the Authority to the Supplier.

19A.3 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 Project Specific IPRs that are in the nature of software as Open Source under Clause 19A.1.

20 **AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 Save as permitted by Paragraph 1.2(a) of Schedule 2.8 (*Data Processing and List of Sub-processors*) 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.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 20.4 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.
- 20.5 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 any 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).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the security requirements in this Agreement.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

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- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

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

- 20.10 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:
- (a) 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
 - (b) 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.
- 20.11 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 20.10 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 20.12 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.

21 CONFIDENTIALITY

- 21.1 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.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

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- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

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

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

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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.

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

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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.

21.7 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.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

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

the Publishable Performance Information,

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

- 22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 8.2 (*Reports and Records*).
- 22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the 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, if required to be provided under Schedule 7.5 (*Financial Reports and Audit Rights*, any 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.
- 22.7 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:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its

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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

- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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

23 PROTECTION OF PERSONAL DATA

23.1 The Parties shall comply with Schedule 2.8 (*Data Processing and List of Sub-processors*) in relation to the processing of Personal Data, if such Schedule is used.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

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

without the prior written consent of the Authority.

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

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);

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- (ii) fraud or fraudulent misrepresentation by it or its employees;
- (iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (iv) any liability to the extent it cannot be limited or excluded by Law;
- (b) the Supplier's liability in respect of the indemnities in Clause 10.14 (*Promoting Tax Compliance*), Clause 14.4 (*Employment Indemnity*), Clause 14.5 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Clause 19A.3 (*Open Source Publication*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); or
- (c) the Authority's liability in respect of the indemnities in Clause 14.4 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

Financial and other limits

25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.5 and 25.6 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the greater of one hundred per cent (100)% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the greater of one hundred per cent (100)% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the greater of one hundred per cent (100)% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.
- (b) the Supplier's aggregate liability in respect of all losses, fines and/or expenses incurred by the Authority, including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach, arising out of or in connection with loss of or damage to Authority Data or breach of any of its obligations under Clause 20 or 23 of this Agreement or of the Relevant Data Protection Laws that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount

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equal to the greater of one hundred and fifty per cent (150%) of the Estimated Year 1 Charges;

- (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the greater of one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the greater of one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

(c) the Supplier's aggregate liability in respect of all:

- (i) Service Credits; and
- (ii) Compensation for Unacceptable KPI Failure;

incurred in any [rolling period of twelve (12) months shall be subject to the Service Credit Cap; and

- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed an amount equal to one hundred and fifty per cent (150%) of the Charges paid or due to be paid or payable during the Contract Year in which the Default occurred,
- (e) provided that where any Losses referred to in this Clause have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement, or wilful repudiatory breach of this Agreement, the references in such Clause to one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).

25.3 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clauses 25.2(a) 25.2(b) and 25.2(d).

25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement 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*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*); and

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- (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed an amount equal to one hundred per cent (100%) of the total Charges paid, due to be paid or payable in the Contract Year in which the Default occurred.

Consequential Losses

25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non-exhaustive list of direct and recoverable Losses:

- (a) the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
- (b) notwithstanding clauses 25.6(c) and 25.6(h), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
- (c) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (d) any wasted expenditure or charges;
- (e) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (f) any compensation or interest paid to a third party by the Authority;
- (g) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;
- (h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data; and

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- (i) any anticipated savings identified in Schedule 7.6 (*Anticipated Savings*).

Conduct of indemnity claims

- 25.7 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 25.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

26 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**27 RECTIFICATION PLAN PROCESS**

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

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) 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;
- (c) 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 KPIs as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

- 27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been a KPI Failure;
- (c) 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

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and regardless of whether such Defaults are remedied) which taken together constitute a material Default); and/or

- (d) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a Default;

(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

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or
- (b) 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),
- (c) then unless the Notifiable Default also constitutes :
 - (i) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
 - (ii) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
 - (iii) a Step-In Trigger Event and the Authority serves a Step-In Notice,

the Supplier shall comply with the Rectification Plan Process. If the Notifiable Default is a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall also apply and if the Notifiable Delay is a KPI Failure, Paragraph 3 (*KPI Failure*) of Part A of Schedule 2.2 (*Performance Levels*) shall also apply.

- 27.4 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

- 27.5 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.

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27.6 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) 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).

27.7 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

27.8 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.

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

28 DELAY PAYMENTS, SERVICE CREDITS AND COMPENSATION FOR UNACCEPTABLE KPI FAILURE

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, Delay Payments may be payable in accordance with Part C of Schedule 7.1 (*Charges and Invoicing*).

28.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits may be deductible from the Service Charges; and/or
- (b) an Unacceptable KPI Failure occurs, Compensation for Unacceptable KPI Failure may be deductible from the Service Charges,

in either case, in accordance with Schedule 2.2 (*Performance Levels*) and Schedule 7.1 (*Charges and Invoicing*).

29 ESCALATION PROCESS

29.1 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)**").

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- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).
- 29.3 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.
- 29.4 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.
- 29.5 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.
- 29.6 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).

30 STEP-IN RIGHTS

- 30.1 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:
- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
 - (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - (c) the date on which it wishes to commence the Required Action;
 - (d) the time period which it believes will be necessary for the Required Action;
 - (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - (f) 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.
- 30.2 Following service of a Step-In Notice, the Authority shall:
- (a) 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;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;

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- (c) 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
- (d) 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.

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

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- (b) without prejudice to any Deductions 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
- (c) 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:
 - (i) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (ii) 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.

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

- (a) the degradation of any Services not subject to the Required Action; or
- (b) 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.

30.5 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:

- (a) the Required Action it has actually taken; and
- (b) 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.

30.6 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

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Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

- 30.7 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.
- 30.8 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:
- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (b) 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).

31 AUTHORITY CAUSE

- 31.1 Notwithstanding any other provision of this Agreement, if the Supplier
- (a) has failed to:
 - (i) Achieve a Milestone by its Milestone Date;
 - (ii) provide the Operational Services in accordance with the Target Performance Levels; and/or
 - (iii) comply with its obligations under this Agreement,
 (each a "**Supplier Non-Performance**"), and

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 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.
- 31.2 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:
- (a) the Supplier Non-Performance;
 - (b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

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- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
 - (d) the relief and/or compensation claimed by the Supplier.
- 31.3 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.
- 31.4 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.
- 31.5 Without prejudice to Clause 5.10 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
 - (b) 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.

32 **FORCE MAJEURE**

- 32.1 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 (*Service Continuity Plan and Corporate Resolution Planning*)), 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.
- 32.2 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.
- 32.3 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:
- (a) are capable of being mitigated but the Supplier has failed to do so;

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- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 32.4 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.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. 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.
- 32.6 Where, as a result of a Force Majeure Event:
 - (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) 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
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (ii) 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.
- 32.7 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.
- 32.8 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.

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SECTION I - TERMINATION AND EXIT MANAGEMENT**33 TERMINATION RIGHTS****Termination by the Authority**

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

- (a) 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;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) 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.

33.2 Where the Authority:

- (a) is terminating this Agreement under Clause 33.1(b) due to the the Supplier committing a material Default, 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
- (b) has the right to terminate this Agreement under Clause 33.1(b) or Clause 33.1(c), for the avoidance of doubt, 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

33.3 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:

- (a) specifying that it is a formal Termination Warning Notice;
- (b) giving reasonable details of the Default; and
- (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.

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- 33.4 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**"):
- (a) specifying that it is a Final Termination Warning Notice;
 - (b) 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
 - (c) 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).
- 33.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

Termination by the Supplier

- 33.6 The Supplier may, by issuing a Termination Notice to the Authority, terminate:
- (a) 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
 - (b) 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

- 33.7 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.
- 33.8 The Parties shall agree the effect of any Contract Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect

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the Partial Termination may have on any other Services and the Charges, provided that:

- (a) 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;
- (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Models and must be reasonable; and
- (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 10.9 and 10.17 (*Promoting Tax Compliance*), 10.6 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.4 (*Employment Indemnity*), 14.5 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 19A.3 (*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

- 34.2 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

- 34.3 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).
- 34.4 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:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

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- 34.5 The costs of termination incurred by the Parties shall lie where they fall if:
- (a) 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
 - (b) the Authority terminates this Agreement under Clause 33.1(d).

Payments by the Supplier

- 34.6 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.

SECTION J - MISCELLANEOUS AND GOVERNING LAW**35 COMPLIANCE****Health and Safety**

- 35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 35.2 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

- 35.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) 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
 - (b) take all necessary steps, and inform the Authority of the steps taken, to

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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

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

Modern Slavery Act

35.5 The Supplier:

- (a) shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and

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human trafficking is not taking place in any of its supply chains or in any part of its business;

- (i) shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- (j) shall not use or allow child or slave labour to be used by its sub-contractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline.

35.6 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of Clause 35.5. If the Supplier notifies the Authority pursuant to this Clause 35.6, it 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 the Agreement.

35.7 If the Supplier is in Default under Clause 35.5 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Agreement any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Agreement.

35.8 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 Clause 35.5 then this shall constitute a Supplier Termination Event.

36 ASSIGNMENT AND NOVATION

36.1 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.

36.2 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:

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

and 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.

36.3 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

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Agreement and this Agreement shall be binding on any successor body to the Authority.

- 36.4 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 (j) of the definition of Supplier Termination Event (as if references in that limb (j) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 37.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

38 RELATIONSHIP OF THE PARTIES

- 38.1 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.
- 38.2 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Supplier.

39 PREVENTION OF FRAUD AND BRIBERY

- 39.1 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:
- (a) 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
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

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

- (a) commit a Prohibited Act; and/or
- (b) 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.

39.3 The Supplier shall during the term of this Agreement:

- (a) 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;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request; and
- (d) comply with any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

39.4 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:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) 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.

39.5 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*).

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- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 39.7 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).

40 SEVERANCE

- 40.1 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.
- 40.2 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.
- 40.3 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.

41 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.

42 ENTIRE AGREEMENT

- 42.1 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.
- 42.2 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

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in this Agreement.

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

43 **THIRD PARTY RIGHTS**

- 43.1 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, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 8.11 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 43.2 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.
- 43.3 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.
- 43.4 Subject to Clause 43.1 and, if such Schedule is used, Schedule 2.7 (*Service Recipients*) 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.

44 **NOTICES**

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt

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Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt
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- 44.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact	██████████	██████████
Address	██████████ ██████████ ██████████ ██████████	██████████ ██████████ ██████████ ██████████
Email	██████████	██████████

- 44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 44.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.6 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™

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1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.4 (*Dispute Resolution Procedure*)).

45 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 Authority in the receipt and/or administration of the Services.

46 DISPUTES

- 46.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

47 GOVERNING LAW AND JURISDICTION

- 47.1 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.
- 47.2 Subject to Clause 45 (*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 Campden BRI
(Chipping Campden) Limited

Signature: [REDACTED]

Name (block capitals): [REDACTED]

Position: [REDACTED]

Date:

[REDACTED]

SIGNED for and on behalf of The
Commissioners for Her Majesty's Revenue
and Customs

Signature: [REDACTED]

Name (block capitals): [REDACTED]

Position: [REDACTED]

Date: [REDACTED]

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SCHEDULE 1

Definitions

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

“Achieve”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“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;
“Admission Agreement”	has the meaning given in Schedule 9.1 (Staff Transfer);
“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”	the clauses of this agreement together with the Schedules and annexes to it;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
“Associated Person”	has the meaning set out at Section 44(4) of the Criminal Finances Act 2017;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Mobilisation Plan or a Project Plan;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and/or Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);

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“Audit Agents”

- (a) the Authority’s internal and external auditors;
- (b) the Authority’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Audit Rights”

the audit and access rights referred to in Clause 12 (*Records, Reports, Audits & Open Book Data*);

“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”

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;

“Authority Cause”

any material Default by the Authority except to the extent that such Default is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

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“Authority Data”

- (a) 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:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.

“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:

- (a) are owned or used by or on behalf of the Authority; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs;

“Authority Premises”

any 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;

“Authority Requirements”

the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Levels*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Mobilisation*), 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

“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 (if any) which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier

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	System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 3 of Part B of Schedule 2.2 (Performance Levels);
“Baseline Security Requirements”	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>) as updated from time to time by the Authority and notified to the Supplier;
“BPSS”	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“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 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.3 (<i>Change Control Procedure</i>);

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“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 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Cluster Members”	Cluster Members means a person named as such in the Annex A to Schedule 12 (<i>Clustering</i>) which shall be incorporated into the Services Description.
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to;</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) the details of the Supplier's IPRs; and (c) the Supplier's business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

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“Confidential Information”

- (a) 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:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) 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;
- (c) 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
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or

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	<p>(v) relates to the Supplier's:</p> <ol style="list-style-type: none"> 1. performance under this Agreement; or 2. failure to pay any Sub-contractor as required pursuant to Clause 10.25 (<i>Supply Chain Protection</i>);
“Connected Company”	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, for the avoidance of doubt excluding any Operational Change;
“Contract Year”	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Contracts Finder”	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015
“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 (<i>Charges and Invoicing</i>);
“Cost Model”	any model set out in Annex 4 (<i>Cost Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>) as may be amended from time to time in accordance with this Agreement, which sets out the underlying principles which make up the Charges;
“Counter Notice”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);

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“Critical KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Credit Rating Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Critical Service Contract”	means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction, in each case which is paid or payable to the Authority under this Agreement;
“Default”	<p>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:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>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;</p>
“Delay”	<ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or mobilisation of a Deliverable by the relevant date set out in the Mobilisation 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 (if any) payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Deliverable”	a part of the Services delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this

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	Agreement, as identified in the Mobilisation Plan or Project Plan;
"Detailed Mobilisation Plan"	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
"Disclosing Party"	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
"Disclosing Party Group"	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) 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;</p>
"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 (<i>Dispute Resolution Procedure</i>);
"Documentation"	<p>descriptions of the Services and KPIs, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Supplier to the Authority under this Agreement;</p> <p>(b) 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,</p>

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	<p>upgrade and test the individual systems that provide Services;</p> <p>(c) is required by the Supplier in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of providing the Services;</p>
“DOTAS”	<p>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;</p>
“Due Diligence Information”	<p>any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;</p>
“Effective Date”	<p>the date on which this Agreement is signed by both Parties;</p>
“EIRs”	<p>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;</p>
“Employee Liabilities”	<p>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:</p> <p>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p> <p>(b) unfair, wrongful or constructive dismissal compensation;</p>

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

“Employment Regulations”

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

“Escalation Meeting”

has the meaning given in Clause 29.1

“Escalation Notice”

has the meaning given in Clause 29.1

“Escalation Process Trigger Event”

- (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;
- (b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event;
- (c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (d) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; and/ or
- (e) 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;

“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

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	and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Extension Period”	has the meaning given in Clause 4.2;
“Final Termination Warning Notice”	has the meaning given in Clause 33.4;
“Financial Distress Event”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Remediation Plan”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Model”	means the model in which the Charges are set out, as set out in Annex 1 (<i>Financial Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>) as may be amended from time to time in accordance with this Agreement;
“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 riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the

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	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 (<i>Staff Transfer</i>);
"General Anti-Abuse Rule"	<ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; (b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and (c) 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"	any goods or equipment to be supplied by the Supplier as part of the Services;
"Government Controlled Company"	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 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
"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

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	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 (<i>Change Control Procedure</i>);
“Incumbent Supplier”	any supplier to the Authority of services similar to the Services prior to the Mobilisation Commencement Date or Operational Service Commencement Date (as applicable);
“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 Commencement Date;
“Insolvency Event”	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986; (b) That person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or

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- a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
 - (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
 - (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

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	(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“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 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 Mobilisation Plan or any Project Plan as key milestones (if any) and in respect of which Delay Payments may be payable in accordance with Part C of Schedule 7.1 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Schedule 9.2 (<i>Key Personnel</i>), if such Schedule is used;

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“Key Roles”	any roles described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with that Schedule;
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with 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”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“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;
“Mandatory Wage”	the statutory minimum hourly rate of pay including the National Living Wage and National Minimum Wage as set by the Crown;

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“Management Information”	any management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>), Schedule 7.5 (<i>Financial Reports and Audit Rights</i>) and/or Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Measurement Period”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Milestone”	an event or task described in the Mobilisation Plan, a Project Plan or an Exit 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 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Mobilisation Plan or a Project Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 7.1 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;

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"Mobilisation"	the activities to be performed in accordance with Schedule 6.1 (<i>Mobilisation</i>) in order that the Supplier is able to commence the provision of the Operational Services in accordance with the terms of this Agreement;
"Mobilisation Plan"	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
"Mobilisation Commencement Date"	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
"Models"	the Financial Model and the Cost Model and "Model" shall be interpreted accordingly;
"Modern Slavery Assessment Tool"	the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat
"Monitored Supplier"	has the meaning given in Schedule 7.4 (Financial Distress);
"Month"	a calendar month and "monthly" shall be interpreted accordingly;
"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 Project Specific IPRs;
"Notifiable Default"	has the meaning given in Clause 27.2 (<i>Rectification Plan Process</i>);
"Occasion of Tax Non-Compliance"	<p>(a) any Tax return of the Supplier and/or its Sub-contractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Sub-contractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>(i) 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;</p>

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- (ii) 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
- (b) 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;
- (c) For these purposes :
 - (i) 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
 - (ii) 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.

“Open Book Data”

has the meaning given in Part A of Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used;

“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;

“Operational Change”

any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to the Authority;
- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and
- (d) will not require a change to this Agreement;

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“Operational Service Commencement Date”	<p>in relation to an Operational Service, the later of:</p> <p>(a) the date identified in the Mobilisation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and</p> <p>(b) where the Mobilisation 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;</p>
“Operational Services”	the operational services described as such in the Services Description;
“Optional Services”	the services described as such in Schedule 2.1 (<i>Services Description</i>), if any, which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.11(<i>Optional Services</i>);
"Order"	any Goods or Services which have been ordered by the Authority in accordance with the procedures set out in Schedule 6.3 (<i>Projects and Ordering</i>) if such Schedule is used;
“Other Supplier”	any other third party which supplies services to the Authority but excluding the Incumbent Suppliers;
“Partial Termination”	<p>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 33.1 (<i>Termination by the Authority</i>), 33.2(b) (<i>Termination by the Authority</i>) or 33.6(b) (<i>Termination by the Supplier</i>) or</p> <p>otherwise by mutual agreement by the Parties;</p>
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“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

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with this Agreement;

“Process”

has the meaning given to it under the Relevant Data Protection Laws and “**Processed**” and “**Processing**” shall be construed accordingly;

“Prohibited Act”

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Prohibited Transaction”

has the meaning given in Clause 10.18 (*Use of Off-shore Tax Structures*);

“Project Plan”

the agreed project plan for an Order set out in, attached to or included by reference in the relevant Order;

“Project Specific IPRs”

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or

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- (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;
- but shall not include the Supplier Background IPRs;
- “Quality Plans”** has the meaning given in Schedule 2.3 (*Standards*) if such Schedule is used;
- “Quality Standards”** the quality standards published by BSI British Standards (the National Standards Body of the United Kingdom), the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with including BS EN ISO 27001 or any equivalent standard which is generally recognised as having replaced it (as applicable), as may be further detailed in the Services Description;
- “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) and **“quarterly”** shall be interpreted accordingly;
- “Rectification Plan”** a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
- “Rectification Plan Failure”**
- (a) 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*);
 - (b) 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*);
 - (c) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by

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which the Supplier must rectify the material Default;

- (d) where a Rectification Plan has been implemented a KPI Failure re-occurring in respect of the same KPI 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);
- (e) the Supplier not Achieving any Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) 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*), if such definition is used;

“Reimbursable Expenses”

has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

“Relevant Data Protection Laws”

- (a) the Data Protection Act 2018;
- (b) the UK GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;
- (c) any other applicable Laws relating to the processing of personal data and privacy; and
- (d) 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;

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“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 but excluding any IPRs in the Authority Background IPRs;
“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 (<i>Authority Cause</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this 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) (<i>Step-In Rights</i>);
“Security Management Plan”	the Supplier’s response to the Authority’s security questionnaire as attached as Annex 2 of Schedule 2.4 (<i>Security Management</i>) and as may be subsequently developed and revised pursuant to Schedule 2.4 (<i>Security Management</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;

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“Service Credit Cap”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Service Credits”	the credits (if any) payable by the Supplier due to the occurrence of one (1) or more KPI Failures in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Period”	a calendar month, save that: <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) 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 KPI in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>), if such Annex is used;
“Service Recipient”	if such Schedule is used, those third parties listed in Paragraph 2 of Schedule 2.7 (<i>Service Recipients</i>) (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 (<i>Services Description</i>) and including the provision of any Goods;
“Services Description”	the services description set out in Schedule 2.1 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Sites”	any premises (including the Authority Premises, the Supplier’s premises or third party premises): <ul style="list-style-type: none"> (a) from, to or at which: <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use

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of the Services; or

(b) where:

- (i) any part of the Supplier System is situated; or
- (ii) any physical interface with the Authority System takes place;

“SME”

an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Social Value”

the social, economic or environmental benefits set out in the Authority’s Requirements;

“Software”

any software which is proprietary to the Supplier or to a third party (or an Affiliate of the Supplier) or any open source software which, in any case, is or will be used by the Supplier for the purposes of providing the Services and any Project Specific IPRs which are software;

“Staffing Information”

has the meaning given in Schedule 9.1 (*Staff Transfer*);

“Step-In Notice”

has the meaning given in Clause 30.1 (*Step-In Rights*);

“Step-In Trigger Event”

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) 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;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty;

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“Step-Out Date”	has the meaning given in Clause 30.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“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: <ul style="list-style-type: none"> (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<ul style="list-style-type: none"> (a) 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 (b) 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;
“Supplier Equipment”	the 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 the Supplier Personnel listed as level 3 escalation point in Schedule 8.1 (<i>Governance</i>);

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“Supplier Non-Performance”	has the meaning given in Clause 31 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“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 Representative”	the representative appointed by the Supplier pursuant to Clause 11.3;
“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	any information and communications technology system used by the Supplier in implementing and performing the Services including the Software and the Supplier Equipment (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting an Unacceptable KPI Failure or a Critical KPI Failure; (b) the Supplier’s level of performance constitutes a Persistent Breach; (c) the Supplier committing a material Default which is irremediable; (d) 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 25.4(a) (<i>Financial Limits</i>); (e) a Rectification Plan Failure;

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- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 10.16 (*Tax Compliance*);
 - (ii) Clause 10.21 (*Use of Off-shore Tax Structures*);
 - (iii) Clause 14.5 (*Income Tax and National Insurance Contributions*);
 - (iv) Clause 19 (*IPRs Indemnity*);
 - (v) Clause 29 (*Escalation Process*);
 - (vi) Clause 35.5 (*Modern Slavery Act*);
 - (vii) Clause 39.6(b) (*Prevention of Fraud and Bribery*);
 - (viii) Paragraph 5.8 of Part C (*Benchmarking*) of Schedule 7.3 (*Value for Money*), if such Part is used;
 - (ix) Paragraph 3 of Schedule 7.4 (*Financial Distress*); and/or
 - (x) Paragraph 12 of Part 2 to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.1(f) (*Warranties*) being materially untrue or misleading;
- (h) 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;
- (i) the Supplier committing a material Default under any of the following:
 - (i) Clause 5.5(f) (*Services*);
 - (ii) Clauses 10.10 to 10.17 (inclusive) (*Promoting Tax Compliance*);
 - (iii) Clauses 10.18 and 10.21 (*Use of Off-shore Tax Structures*);
 - (iv) Clause 23 (*Protection of Personal Data*);
 - (v) Clause 22 (*Transparency and Freedom of Information*);
 - (vi) Clause 21 (*Confidentiality*);
 - (vii) Clause 35 (*Compliance*);

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- (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
- (iii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (j) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (k) 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);
- (l) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 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;
- (m) 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 Schedule 4.3 (*Notified and Key Sub-contractors*);
- (n) 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*);
- (o) 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;
- (p) the Supplier:

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- (i) commits an irremediable breach of the Admission Agreement; or
- (ii) 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;
- (q) 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; or
- (r) the Supplier commits a breach of any of the requirements set out at Clause 35.5 (Modern Slavery Act);

“Supply Chain Map”

details of (i) the Supplier, (ii) all Sub-contractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:

(a) the name, registered office and company registration number of each entity in the supply chain;

(a) the function of each entity in the supply chain; and

the location of any premises at which an entity in the supply chain carries out a function in the supply chain;

“Supply Chain Transparency Information Report”

the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.2 (Reports and Records);

“TAAR” or “Targeted Anti-Avoidance Rule”

provision(s) in any legislation which seeks to prevent avoidance of any Tax;

“Target Performance Level”

has the meaning given in Schedule 2.2 (*Performance Levels*);

“Tax”

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) 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

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	<p>(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
“Tax Revenue”	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 Schedule 8.5 (Exit Management);
“Termination Assistance Period”	has the meaning given in 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 (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, and any other services required pursuant to the Termination Assistance Notice;
“Termination Warning Notice”	has the meaning given to it in Clause 33.3;
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Third Party IPRs”	Intellectual Property Rights owned by a third party which are or will be used (or otherwise made available) by the Supplier before or during the Term for designing, testing implementing or providing the Services;

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“Third Party Provisions”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transparency Information”	has the meaning given in Clause 22.1 (Transparency and Freedom of Information);
“Transparency Reports”	has the meaning given in Schedule 8.2 (Reports and Records);
“UK”	the United Kingdom;
“UK GAAP”	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;
“UK GDPR”	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;
“Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;

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“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Paragraph 4 of Schedule 8.2 (Reports and Records);
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

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SCHEDULE 2.1

SERVICES DESCRIPTION

1.0 INTRODUCTION

The principal contract owner is Her Majesty's Revenue & Customs (HMRC) who conducts this work in partnership with Border Force, and Department of International Trade. This Contract will run for 60 months with an option to extend for a further 12 months.

Contract Sponsor responsible for this contract is:

HM Revenue & Customs

Customs & Border Design Directorate – Tariff Classification Service

10th Floor

Alexander House

21 Victoria Avenue

Southend on Sea

SS99 1AA

1.2 The Client:

HM Revenue & Customs (HMRC)

HMRC is the UK's tax, payment and customs authority.

Website: <http://www.hmrc.gov.uk>

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Third Party Beneficiaries:

Border Force (BF)

Border Force is an operational command within the Home Office responsible for customs controls at the border.

Website: <http://www.gov.uk/government/organisations/border-force/about>

The Home Office (HO)

The Home Office is the lead government department for immigration and passports, drugs policy, crime, fire, counter-terrorism and police.

Website: <http://www.gov.uk/government/organisations/home-office>

Department of International Trade (DIT)

DIT secures UK and Global prosperity by promoting and financing international trade and investment, and championing free trade

[Website: Department for International Trade - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

NOTE:

For the purpose of this specification only 'Client' will refer to HMRC and 'Clients' will refer to HMRC, Border Force and DIT.

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1.3 Governance Arrangement

There is a Partnership Agreement between HM Revenue and Customs (HMRC) and The Home Office (HO) that sets out the collaborative working arrangements in respect of Border Force (BF), and a further arrangement between HMRC and DIT

The agreements set out a framework within which HMRC & OGDs work together to ensure HMRC objectives are met. They also set out how the departments meet the UK's commitments within the WCO and its obligations in respect of international trade and security.

The partnerships are based on an understanding of each other's objectives and priorities, mutual trust and support, and working together.

1.4 BACKGROUND

The Customs & Border Design Directorate within HMRC is responsible for HMRC's strategy for customs controls, duties and import VAT on imports into the UK and Northern Ireland

In order to establish how much duty is due on a particular type of commodity, each product is classified in accordance with the UK Trade Tariff or the EU Customs Tariff depending on the movement of goods and a 10 -14 digit commodity code allocated. More information can be found [here](#)

Traders may apply to UK Custom's authorities for confirmation of the correct commodity code to use. These applications are for an Advance Tariff Ruling (ATaR) for UK import and exports and a Binding Tariff Information ruling (BTI) for Northern Ireland imports and exports. The rulings are issued by HMRC's Tariff Classification Service, (TCS) based in Southend on Sea.

Further information regarding Advance Tariff Rulings (ATaR) and Binding Tariff Information (BTI) can be found in the link below:

[Check what you'll need to get a legally binding decision on a commodity code - GOV.UK \(www.gov.uk\)](#)

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HMRC is responsible for ensuring that goods entering the country are legal and declared correctly to customs. This is done by pre and post clearance documentary checks and physical examination of goods. At the UK border this work is done by Border Force collecting samples from shipments, and inland this work is conducted by HMRC business such as ISBC who visit traders premises and undertake audits.

Fraud Investigation Service (FIS) pursue any criminal activity undertaken concerning prohibited or counterfeit goods. Following raids on premises, goods are confiscated for further examination to establish the specific make up and content.

The Supplier may be required to provide Witness statements, and represent the Client at WCO meetings, Court hearings and tribunals. This may be to discuss specialist topics/procedures around analysis or to give explanations of their testing methods and results.

Attendance at these may also be required if representation in person is requested.

The successful Supplier must be able to offer a full analytical service to the Clients with the expertise to carry out the representational services.

1.5 The Operational Environment – (Please see attached Process Map)

HMRC, DIT and Border Force work in tandem to ensure that illegal substances are not brought into the country and the correct duties are collected from imported goods. HMRC instruct Border Force to collect samples of goods at import or export to enable the analysis and correct classification and/or duty liability. DIT request written advice for the purpose of duty suspensions.

The business units within HMRC, DIT and Border Force will independently arrange purchase orders and distribute samples/documentation to the supplier for analysis and review.

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When requesting analysis by HMRC or Border Force, a 'Test Note' will contain certain details such as:

- the officer who has taken the sample
- internal reference numbers
- a physical description of the goods
- the volume of goods
- what they have been described as
- the reason for testing
- a purchase order number to be used on the invoice

The samples will be clearly labelled for accurate identification. The samples from Border Force could be sent from any of the UK ports but mainly those identified in 1.6.

Samples sent from Criminal Investigation can be sent from any crime scene and will be securely packaged as it may be used as evidence. The results of the analysis will be emailed to the case worker notified on the test note.

The supplier will send the invoice to the originating department who sent the sample, the invoice will include the purchase order number from the 'Test Note'.

The Supplier will return the results of analysis to the originating department or specified on the paperwork accompanying the sample.

1.6 Business Leads

There are 7 main lines of business sending work to the supplier. Each of these plays an active part in the overall aim of ensuring no prohibited goods enter, and the correct duty is paid, on importing into the UK. Some business areas may be based in multiple sites, all of which may send samples to the Supplier.

HMRC

- Tariff Classification (TCS)

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- Individuals and Small Business Compliance (ISBC) & Large Business (LB) multiple sites
- UK Agricultural Team Unit of Expertise (UKAT UofE) part of ISBC
- Solicitors Office (SOLS)
- Criminal Investigation

Home Office

- Border Force (BF) - multiple sites at point of entry to UK

Department of Trade

- Suspensions MFN Tariff Policy Team

Tariff Classification (TCS)

This business unit is responsible for UK tariff classification policy. TCS issue ATaRs and BTI rulings to traders who request written legal rulings confirming the classification of their goods. Applications are made online to HMRC & and classified by a team of staff using the UK or EU Customs Tariff. TCS also issue duty liability rulings to HMRC/BF compliance officers.

Individuals and Small Business Compliance (ISBC) Large Business (LB)

Assurance staff in ISBC and LB visit traders for audit purposes including completion of post clearance checks. They may collect samples for inspection and analysis if they suspect that there are discrepancies with the commodity codes or duties that have been paid. These samples may be sent to the supplier for analysis and further identification. Samples are normally food stuffs, chemical or agricultural products. These samples may come from multiple sites.

UK Agricultural Team Unit of Expertise (UKAT UofE)

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The UKAT UofE arranges for samples of agricultural imports or exports to be collected for analysis. This could be due to these being sensitive or contentious products or where regulatory or specific product analysis is required. The majority of samples are taken by Border Force at the point of import. The UKAT UofE is responsible for follow up actions after the analysis results are returned to them.

Solicitors Office (SOLS)

Following a binding tariff decision, duty liability ruling or confiscation of goods, traders or individuals may appeal a decision to the First-tier Tribunal and on to the Senior courts. HMRC's legal advisers may request the supplier to provide analysis, reports, witness statements and/or evidence to support litigation. Appearing as a witness at court or tribunal hearings may also be required, please refer to section 2.5.

Fraud Investigation Service (FIS)

FIS attend and examine crime scenes to recover forensic trace evidence and carry out specialist photography. An investigator is appointed to advise on a forensic strategy and guide through a staged submission of evidence.

Following a seizure of alcohol or tobacco, crime scene investigators (CSI) will send samples from the crime scene to the supplier for analysis to determine its content and establish exactly what substances are present. Typical goods are counterfeit tobacco and alcohol, produced by illicit traders.

Border Force (BF)

Staff from Border Force collect samples at the border on behalf of the HMRC's UK Agricultural Team Unit of Expertise (UKAT UofE). HMRCs declaration systems are set so that certain goods are highlighted and removed at import.

These goods are examined by BF officers and if necessary, sent to the Supplier for analysis.

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Samples could be collected and sent to the supplier from any entry point in the UK together with a 'Test Note' as described at 1.5.

The sites named below are generally the key sample collection points:

- Felixstowe
- Southampton
- Tilbury
- London Gateway
- Dover
- Immingham
- Seaforth
- London Heathrow
- Manchester
- Liverpool
- Belfast

Suspensions MFN Tariff Policy (DIT)

Twice a year, DIT invite traders to apply for products to receive a temporary duty suspension on importation. Depending on the complexity of the product, the description may be sent to the supplier for advice on the correct commodity code depending on the products content.

There are generally no samples needed for this and the work is based on documentation sent from DIT to the supplier via email.

2.0 THE REQUIREMENT

2.1 UK & EU Tariff Classification

The principal work in this contract will be the analytical and technical advice provided by the Service Provider to the Clients for the purpose of determining the correct make up of a substance or sample to assist with 'classification' of goods and illicit trading within the UK

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The Supplier is to ensure accurate identification of goods from analysis and technical knowledge in order that HMRC and DIT are able to determine:

- The correct Commodity code
- The correct amount of duties (Customs & Excise) and VAT are paid
- The collection of statistical information is maintained
- Whether an import or export licence is required
- That a Tariff Quota is applicable and/or export refund is due on some agricultural products
- The substances within the sample are as declared

Classification decisions are required on an extensive and wide range of products as contained within the UK Global Tariff or the EU Customs Tariff.

A link to the Tariff listing goods and commodity codes is below

<https://www.trade-tariff.service.gov.uk/trade-tariff/sections>

It is essential that the Supplier has a full and comprehensive knowledge of the Tariffs including Chapter and section notes, and the regulations associated with each. They will also need to be competent with the General Interpretation Rules (GIR's) and understand the Nomenclature on which classification decisions are based.

The nomenclature used in the Tariff evolves as it keeps abreast of trade developments. During the term of the contract it essential that the Supplier keeps up to date with these developments.

Further information of the Tariff is available in the link below:

- <https://www.gov.uk/government/collections/tariff-notice>

The analysis and advice on classification must take due regard to the Taxation Cross Border Trade Act 2018, EU Regulations, the EU Combined Nomenclature, Combined

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Nomenclature Explanatory Notes, the Harmonized System, Harmonized System Explanatory Notes and the Compendium of Classification Opinions.

The work involved is usually related to cases where there are complexities in deciding into which of two or more classifications (with different tariff bandings) a product should be assigned to. Scientific analysis and/or interpretation is necessary to assist in the identification of the correct classification. The Supplier will be expected to only carry out those tests required in order to place the sample in any of the possible headings for that product.

The nature of this work is ad-hoc and unpredictable as it can cover an extraordinary wide range of products. The Supplier will be expected to offer advice and make suggestions on areas of the Tariff to consider based on the analysis carried out and their knowledge around the legal text associated with each Chapter.

The Supplier will need to be familiar with the Meursing code system which is used to establish additional digits of the commodity code in accordance with EU Regulation 510/2014. Whilst these codes are not required under the UKTT, they will still be required for NI imports. Samples may also be tested following a post clearance check which may require retrospective analysis, and meursing codes. Further details of the Meursing code system can be found in schedule 4

The Supplier will also need to have experience of the European Customs Inventory of Chemical Substances (ECICS) which is a guide to the classification of chemicals in the Combined Nomenclature, and a knowledge of the list of International Nonproprietary Names (INNs) which facilitate the identification of pharmaceutical substances or active pharmaceutical ingredients.

Samples can be sent from any of the business areas previously mentioned or direct from a trader if an HMRC officer requests this route to prevent goods from perishing.

Whilst analysis could be for any product within the trade tariff, the majority of samples and analysis required are based on just a few different areas

For ease of reference the detailed requirement for these specific areas has been subdivided into schedules. (S1 – S5). Each schedule gives further details and states the full range of services and information required for that area.

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In May 2021, the UK launched its independent tariff suspension scheme which allows those traders based in the UK and Crown Dependencies to apply for suspensions, or temporary tariff reductions, on specific products. The Suspensions MFN Tariff Policy team at the Department for International Trade (DIT) manages this process, and it is expected to run two times a year from 2022.

DIT will require the Supplier to assist with suspension text for products relating to chapters 1-39 of the Tariff. This highlights the importance of not just physically analysing products but being able to refer technically to their make up in conjunction with the Tariffs legal text. The supplier will need to proofread and ensure consistency of text in order for DIT to publish such suspension material and enable the trade to apply. This will involve communication via email, no samples will be sent

There will be a requirement for the Service Provider to travel to various meetings etc on behalf of the Client. UK travel and subsistence costs will be paid to the Service Provider in line with the Clients prevailing rates. These are outlined at Appendix C. Anything above these allowances will need prior approval from the Client.

The analytical service related to this contract is extensive and the list of service requirements from the supplier is listed below. Response times for this work is listed in Section 8.

- Analyse an extensive and wide range of products as provided within the UK Customs Tariff
- Provide appropriately qualified staff with a full and comprehensive knowledge of the UK Integrated Tariff who can interpret scientific results across the widest range of product types
- Employ staff with detailed knowledge of tariff rationales, the General Interpretative Rules, contained within the UK Customs Tariff, EU Regulations and a thorough knowledge of rulings and precedent in this area
- Identify products, product elements, compounds, and their chemical structure
- Determine product purity, and the presence of substances not provided for by legal text
- Determine presence of specific substances or ingredients within a sample to include the values of weight, volume etc.
- Identify species of animal, plant or vegetable from which a sample has been taken
- Determine whether or not goods have undergone any specific process or modification
- Identify the material and/or components used in the manufacturer of the goods i.e. leather or synthetic

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- Provide advice on the scientific and technical aspects of draft Nomenclature changes
- Provide telephone advice/information when requested by the Clients
- Action e-mail queries from the Clients on the subject listed above.

2.2 Submission and Retention of Samples

The Clients will be responsible for the transportation of the samples to the supplier.

All samples submitted by Border Force for testing will be accompanied by a 'Test Note' attached, see Appendix A. Each sample will be individually identifiable. The samples could be sent from any of the business units mentioned in section 1.6 and will be transported in a way appropriate to the sample e.g. chilled for fresh products, secured sealed for seized goods. The size of the sample will depend on the product and analysis required. If it is prepacked for retail sale, the product will arrive at the supplier's premises whole, however only a representative sample of the product needs to be tested.

Samples that are contaminated or tampered with may provide false readings after analysis. This could result in incorrect duty rates being imposed.

To mitigate this risk the supplier will need to implement security procedures for receipt and handling of samples.

Samples from crime scenes would be placed in Tamper Evident Bags that are sealed on site and have a unique reference number on each bag. If the samples are large, they go in a large clear plastic bag that is then sealed with a plastic tamper evident wrap, like a cable tie, again with its own unique reference number. Any samples opened before receipt by the supplier should be notified to the Client immediately

All samples to be signed for on delivery.

Although the Client requests the supplier to work during the hours of 08.00-18.00 they will need to ensure that access to the premises is available outside of these hours to ensure that fresh food can be received and stored without contamination.

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The Supplier will need to ensure that each individual sample is recorded and traceable on a secure database to ensure it is identifiable at all times.

Results need to be recorded and retained and if necessary passed to a new Supplier at contract end.

It is the responsibility of the Clients to inform the Supplier of the significance of any sample and for what period of time it is likely to be stored. The Clients will notify the supplier quarterly of any disposals, in order to keep storage to a minimum.

After completion of analysis the samples will normally be stored as follows:

- Samples opened and not fit for further analysis – these may need to be frozen for future use, so liaising with the appropriate department will be needed
- Other samples with no problems or significance – stored for 6 months, but the client will notify the supplier when the sample may be destroyed
- Samples analysed and subject to dispute or court proceedings are generally stored until litigation is concluded. This storage can often extend to a number of years.
- Samples sent by FIS CSI should be returned as these may be required for evidence. FIS will arrange this collection unless otherwise notified to the supplier.

Typically between 60-65% of foodstuffs tested prove to be incorrectly classified, and could be subject to litigation. If any samples are to be stored outside these arrangements then this should be agreed with HMRC and a destruction date set.

No charges are to be incurred for storage and disposal of samples (other than specialist disposal) and therefore this should be built into the unit price. We would expect at any given time the supplier might be storing between 800- 2000 samples. These may be food or CI samples so additional secure storage may be required.

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Samples that require specialist destruction can be charged. This will need to be agreed with the client at the time.

Sample retention over 12 months can be charged this will need to be agreed on an Ad Hoc basis with the Clients.

The Supplier will need to notify the Client of Samples that are being stored over the 12 month period.

The link below is the sampling manual for customs and taxation authorities. It contains information and instructions on how to take and handle samples for laboratory testing:

http://ec.europa.eu/taxation_customs/dds2/SAMANCTA/EN/index_EN.htm

2.3 Storage of Samples

Storage conditions are determined by the characteristics and properties of samples taken. Storage conditions at the supplier's premises should ensure that the samples are not altered in any way that might affect the parameters to be analysed.

In general samples are to be stored in a clean, dry, dark, cool, secure lockable unit within a sufficiently ventilated room.

The storage temperature to be regularly monitored. The temperature should not drop below 0 °C and should not exceed 30 °C.

Foodstuff samples must be stored separately from other samples and certain food samples such as garlic cannot be stored with any other food samples. Perishable goods must be stored in refrigerators or freezers as detailed in the table below.

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Where samples are stored in fridges/freezers ensure all labelling is protected against becoming smudged and unreadable e.g. placed inside a second plastic bag.

Flammable substances must be stored in accordance with the fire safety regulations.

The majority of samples will be food stuffs, tobacco or chemicals however larger objects such as shoes, bags and other rubber or leather products may also be sent.

For agricultural products, the bulk of samples will be between 250-500g per sample or 500ml per sample; for olive oil it will be a representative number of bottles from the shipment. From time to time samples will be in excess of this, in these cases the Clients would discuss with the Supplier in advance to ensure that appropriate storage was available.

As the contract runs, the number of samples to be stored will increase (due to retention periods) the Supplier will need to ensure that there is suitable storage meeting the required standard during the term of the contact.

Currently the approximate split of food samples is:

- Frozen 30%
- Refrigerated 1%
- Standard 69%

Generally samples are of a fairly small size however there can be times when large quantities are needed to be retained for long periods of time. Discussions can be held with the supplier if, on these occasions, additional storage need to be sourced.

Examples in reference to product specification conditions are given in table 1 below, you should refer to the specific sampling procedure for more details.

Table 1.

Product	Conditions
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Light sensitive samples	Storage in a dark place.
Samples giving off poisonous or unpleasant smells.	Possible storage in a fume hood or in a room with sufficient mechanical ventilation.
Highly inflammable and other dangerous samples	See MSDS. Storage in a safety cupboard, when possible. If no information available ask laboratory for storage conditions.
Samples susceptible to decay	Storage in a freezer or refrigerator; depends of character of the product.
Samples of chilled products	Storage at approx. 4 °C.
Samples of frozen products	Storage at approx. - 18 °C.
Samples of retail packing of food products and of medicines and pharmaceutical products.	Storage at conditions labelled on packing, but not above approx. 25 °C.
Samples of mineral oils	Inflammable substances must be stored in a well ventilated room.
Ceased samples (tobacco or alcohol)	These will need to be stored with additional security i.e. a room with key code entry

2.4 Cool Box Returns

It is the responsibility of the Clients to package and arrange transport of the samples so that they arrive at the Suppliers premises in a suitable condition for analysis. Depending on the numbers and sample type these could be delivered within a re-usable container such as a Cool Box.

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The Supplier will need to return these re-useable Cool Boxes to the sender. The majority being from the key sites at Border Force as stated in section 1.6

The transport for these Cool Box returns will be chargeable to the Clients.

The Cool Box dimensions and tare weight are set out in table 2.

Table 2

Small Cool Box (Type 1)	Dims 45x38x28cm @ 2.0 kg
Small Cool box (Type 2)	Dims 36x24x36cm @ 2.08 kg
Medium Cool Box (type 3)	Dims 60x32x35cm @ 3.78 kg
Large Cool Box with wheels (Type 4)	Dims 89x47x44cm @ 8.0 kg
Large Cool Box (Type 5)	Dims 56x33x38cm @ 3.25 kg
Extra Large Cool Box (Type 6)	Dims 142x43x48cm @ 10kg

2.5 Expert Witness, Witness Statements and Court Appearances

Classification decisions issued by the Client are subject to review and appeal procedures. In some cases, the legal procedures may involve the Client and the Supplier having to attend and give evidence at a Tribunal or Court of Law. Attendance by the Supplier may also be required at any of the Client's premises.

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There is a two-stage appeal process for classification decisions that is operated by HMRC. The first is an independent review of the decision which is carried out by the Solicitor's Office and Legal Services (SOLS) and the second is an appeal generally to the First-tier Tribunal (Tax) and subsequent appeals through the senior courts that are independent to HMRC.

The Supplier will be required to support the Client with cases that are in review and litigation:

- At the Review Stage the supplier will be required to provide comment on technical arguments produced by the appellant and to carry out analysis on the original or duplicate sample, and carry out technical research as necessary. As there is a statutory 45-day limit for completion of a review, this work will need to be done within strict deadlines.
- At the Appeal Stage the supplier will be required to review and provide expert opinion on technical arguments and evidence produced by the appellant, their representatives and expert witnesses.

The Supplier will be required to carry out analysis on the original or duplicate sample and carry out technical research as necessary. They may need to provide witness statements and reports (attaching copies of all background material including contemporaneous notes), attend case conferences with solicitors and counsel for HMRC and give expert evidence to the tribunal.

The individuals representing HMRC will need to understand court procedures, be able to articulate evidence and respond appropriately to being cross-examined.

The Client on request would have to present evidence obtained by forensic examination to the court and this would rely on the accuracy and standard of the written statements provided by the Supplier.

The Client requires the supplier to:

- Ensure that appropriate systems are in place to document the chain of evidence;
- Ensure that documentation is of a standard that will withstand the scrutiny of the courts when required;
- Provide interpretation of the results of examination for case officers and the Client's legal representatives;

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- Ensure that each examination is supported by laboratory records and statements produced to a standard that will meet the requirements of the courts;
- Ensure that their staff are able to attend court as expert witnesses; and
- Ensure that these staff are suitably qualified and trained to undertake this role.

2.6 Client / Supplier visits

As part of the Client / Supplier development it is expected that there will be a commitment to attend reciprocal visits sharing and exchanging knowledge to ensure a mutual understanding of current analytical practices, legislation, policy and processes.

It is expected that the Supplier would host these visits on a quarterly basis holding up to 4/6 persons from the Clients.

Normally this wouldn't attract any additional cost however if the frequency and numbers were to significantly rise then this policy would be reviewed by the Client.

2.7 Representation Service Requirements & HMRC Meetings

There are various UK, EU and Worldwide organisations that are involved in analytical activities.

Primarily these are the Department for International Trade, and the World Customs Organisation (WCO) with whom the supplier will work either directly or in conjunction with the Client.

The Supplier will be required to represent the client in meetings and supply feedback. A Client representative may attend these meetings but it will depend on the meeting content in each case.

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Currently these meetings are held in Brussels, but this may change.

a) Attendance at WCO (World Customs Organisation) Scientific Sub Committee (SSC), WCO Harmonised System (HS) and WCO Review Sub-Committee (RSC) Meetings

Provide scientific representation, technical advice at the above meetings where tariff classification is discussed. This will necessitate the study of agendas and working papers, preparation of classification advice, positions and proposals, preparation of reports as requested by the Client, together with proposals for action points.

This will involve attendance at meetings, and certain sub-groups either in person or virtually, studying agenda and working papers and contributing proposals.

(Attendance approximately 4-6 per annum).

(For example, SSC meets once a year in January for up to a week in duration, WCO HS and WCO RSC meet twice a year for up to 2-3 weeks in duration all of which used to take place in Brussels however following the pandemic, these may be virtual with the duration changing to suit video meetings. Agendas usually issued approx. 6 weeks in advance of the meeting)

b) Attendance at GCL (Group for the Co-ordination of Laboratories) meetings & Customs Code Committee meetings (CCC)

The GLC gives the opportunity for EU laboratories to get together with the objective of sharing expertise, harmonising analytical procedures and finding solutions for problems facing Customs chemists. The group is formed into sub-groups dealing with a methods database, method improvements and quality management issues. This will involve attendance at meetings, and certain sub-groups, studying agenda and working papers and contributing proposals

The CCC will necessitate the study of agendas and working papers, preparation of classification advice, positions and proposals, preparation of reports as requested by the Client, together with proposals for action points.

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Since leaving the EU, we have not been required at these meetings but invitations may be issued and the supplier would then be expected to attend.

Participation in various collaborative studies and Ring Tests will also be required:

https://ec.europa.eu/taxation_customs/business/customs-controls/eu-customs-laboratories_en

(Attendance approximately 3-4 per annum but it is difficult to give specifics as we have not yet attended since we left the EU).

c) Attendance at HMRC Internal meetings

Analytical work is done on behalf of HMRC's. UK Agricultural Team (UK Agricultural Bill), and the majority of samples analysed are UK Agricultural goods. Meetings are arranged throughout the year between the UK Agricultural team, and UK Agricultural Policy owners to review current processes, discuss, raise issues, and implement changes if necessary. These meetings are beneficial to both HMRC and the Supplier and it is recommended that the Supplier attends. Testing practises are discussed and the supplier may wish to share outcomes from their recent meetings.

These UK Agricultural network meetings are held in the UK, but the location varies to allow all stakeholders in the UKAT network around the country to be given the chance to attend.

(Attendance approximately 2 per year).

2.8 Professional Advice and Consultancy

In addition to the Representation Service Requirement the supplier may need to advise on technical issues that require further information on analysis methods or research into suggested testing methods advised by the EU or WCO. The meetings attended

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may require background information to be supplied if new testing methods are either being discussed or introduced.

The Client may also require further investigation/information and advice on cases that are either being appealed against or questioned over testing methods.

The additional investigations, consultations and research may be charged to the client if in depth work is necessary.

2.9 Customer Service / General Inquiries

In addition to this advice there is a requirement for a dedicated customer service provision to provide advice on tariff classification, suspensions and their implementation, and non-case specific advice and ad hoc requests.

Occasionally there may be a requirement to host visits of chemists from other WCO Customs Laboratories and likewise send suitably qualified staff on reciprocal visits. These would be ad hoc, and unlikely, but possible.

3.0 Travel Costs & Travelling Time

There will be a requirement for the supplier to travel to various meetings on behalf of the Client. UK travel and subsistence costs will be paid to the Supplier in line with the Client's prevailing rates. These are outlined at Appendix C. Anything above these allowances will need prior approval from HMRC.

EU and World Travel and Subsistence Costs will be paid to the Supplier in line with the Foreign and Commonwealth rates. These can be accessed via GOV.UK website (see link below):

[Travel Expenses outside of the UK](#)

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Where subcontractors are utilised, the travel and subsistence costs will be paid at the same rates as the supplier.

Traveling time will be deemed as cost of doing business, therefore there will be no additional traveling time paid. However anomalies may occur for example if a meeting starts at 1pm and finishes at 5:30pm and the day began 7am in order to arrive on time. With agreement there may be a charge for 1 day's rate in such a case.

4.0 The Analytical Requirements

Background

The Supplier will be required to carry out analysis in line with legislation and agreed testing procedures appropriate to both UK (and EU regulations for NI rulings).

There may also be additional legislation & guidelines relating specifically to the UK or WCO which will also need to be complied with. At this stage, this hasn't been specified

More information on this can be found in the link below:

https://ec.europa.eu/taxation_customs/business/customs-controls/eu-customs-laboratories_en

https://ec.europa.eu/taxation_customs/sites/taxation/files/action-1-iliade.pdf

Test notes will be sent with the samples for those collected at the port and will highlight the requirement.

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Test notes from FIS will be sent prior to the sample for the supplier to agree analysis before the sample is sent. Contact details will be given on the test note

The Clients will expect the Supplier to use their expertise to carry out the appropriate test in the most efficient and effective way, for example not testing for milk fat if the supplier knows that it will not be present. The Client will also expect the Service provider to use their Tariff knowledge to plan the relevant test depending on the possible area of the Tariff the product may fall.

Most food products will require testing to determine their content i.e. fat, starch, however other food products may require different tests depending on what needs to be established. There are numerous considerations to determine the correct tariff classification of goods, the tests mentioned in this specification are the typical tests used to determine classification.

Test methods used MUST comply with the regulations associated with the particular sample. Regulations are highlighted in the Tariff in the Chapter and section notes. It may be necessary to carry out taste testing and the supplier will be expected to sub contract this if it is not possible to be carried out in house. The sub contractor will need to hold the same accreditation as the supplier.

The most common products that are sent for analysis are:

- Cereals
- Dairy Products
- Maize
- Rice (all varieties)
- Yogurt
- Sweets
- Oatmeal
- Pastries
- Spring Rolls
- Corn Products
- Wheat
- Fruit Juice
- Fruit Prepared in Preserved
- Jam
- Seasonal Poultry -
- Chinese Pork
- Wine

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- Tobacco

Please note this list is not exhaustive.

Other occasional products that may be sent for analysis could include:

- Rubber Goods
- Metals
- Leather Goods

The analysis carried out for these goods may vary from determining if the goods are made from leather or plastic, or the makeup of rubber products to determine polymers to aid classification. This analysis will need to comply with the Chapter notes in the Trade tariff for such items.

For Suspension applications relating to products under Chapters 1 to 39 (inclusive) of the Harmonized System (food products, chemicals and other products), the supplier will:

- use information provided by applicants, such as product datasheets, and their technical expertise to confirm the applicable commodity codes for products subject to a suspensions request
- advise DIT on product descriptions/suggested suspension texts based on the applications received in a style that is typical for suspensions
- liaise with DIT where further information is needed from applicants for classification purposes
- quality assure information that DIT is required to publish, such as a notice of requests, which summarises the applications received to allow businesses the opportunity to submit an objection
- work with DIT to develop final suspension texts for successful applications, following the government's assessment of the applications and consideration of objections received.

On occasions where further test requirements are needed but not stated, such tests would be based on a price on application basis.

All the individual test prices go forward to form the basket of prices within the contract schedule upon contract award.

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Please see the Price Model for the most common tests used.

5.0 Ad Hoc Analytical Requirements

The UK and EU Trade Tariffs allows certain goods that originated in specific countries (depending on the commodity) to claim a lower rate of duty. Some goods imported from or exported to certain countries will qualify for preferential treatment - whereas others will have non-preferential status and attract full rate of Customs Duty.

The Supplier may need to conduct detailed analysis to establish the origin of the product. Whilst it will not be the Suppliers responsibility to name the country of origin, certain analytical tests may indicate where the product originated, i.e. analysis of the soil where a product was grown can indicate the country of origin.

In addition there may be other analytical service requirements to help determine tariff classification and import duty that is not mentioned in this specification.

There may also be additional service requirements in relation to the representational services but not specifically mentioned in this specification.

These types of analytical requirements would be on an ad hoc basis and a price would be requested per application.

Ad hoc requirements would be progressed through as a variation to contract and will adhere to regulation 72 in the Public Contract Regulations 2015.

If the Supplier does not hold the necessary expertise or equipment the Supplier should sub-contract this work on the Client's behalf. Any subcontractor will need to hold the same accreditation, and knowledge of the Tariff and associated legal text be approved by the Client to avoid any duplication through testing disputes, and to ensure they are compliant with HMRCs practices.

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6.0 Supplier Criteria

6.1 Hours of Service

The Client requires the Supplier to provide the service during office hours only. These are defined as Monday to Friday, 0800 hours - 1800 hours, excluding Public Holidays.

Out of Hours arrangement

There may be a requirement to receive samples outside the office hours due to unforeseen events such as traffic delays.

The Supplier will need to have arrangements in place to accept the sample, sign for it and store it appropriately until analysis takes place.

Should the Supplier close down over the Christmas period, notification will need to be communicated to the Clients in order for alternative arrangements to be made.

6.2 Quality Standards & Accreditations

The Supplier is required to commit to a quality assurance programme and achieve as a minimum the accreditation BS EN ISO IEC 17025:2017 for (General requirements for the competence of testing and calibration laboratories).

As previously stated in paragraph 5.00, any subcontractors must also hold the above accreditation.

3.0 Contract Management and Management Information

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For contract management purposes the Supplier will be required to:

- Nominate a contract manager
- Provide a point of contact for the Clients who will provide advice/guidance on issues of a non case-specific nature. For example, guidance may be required on legal, technical and procedural matters prior to the Client making a policy decision
- Attend regular contract management meetings, the frequency to be agreed by the parties.

The Supplier to provide management information to the Clients; the frequency and format to be agreed. Typically this would be:

- Individual Net spend attracted with HMRC and Border Force aligned with total number of invoices
- Distinction of spend type with HMRC and Border Force
- Total number of samples received for analysis by line of business
- Total number of purchase orders by line of business
- KPI performance for Routine and Important deliverables

- 7.1** The Clients current Commercial Contract Manager who will monitor any contract arising from the Invitation to tender is detailed below:

HMRC Commercial Directorate

1st Floor East

2 Dearmans Place

Salford

M3 5BS

- 7.2** The Technical Contract Manager to manage the contract will be as in section 1.0.

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4.0 **ponse Times**

Unless otherwise stated the Supplier should comply with the timescales as stated in Table 3 for delivery of the sample analysis results / findings.

Performance to be measured from time of receipt of sample at the Supplier’s laboratory to receipt of notification via email to the client. These dates are recorded by the UK Agricultural Team UofE

Verbal enquiries asking for a general opinion about particular goods should be resolved within 1 working day of the original request unless as a result of initial enquiries more detailed investigation is necessary. In these instances the Supplier should notify the officer as soon as possible and agree the way forward.

General written enquiries from TCS should be responded to within 14 calendar days for TCS to meet their SLA. If this can not be met, notification must be issued to the enquiring officer within that timeframe.

Written enquiries regarding legal procedures i.e.from Solicitors for Tribunals, or Suspension notices from DIT must take precedent and be returned with the deadline given on the request.

Any extensions to the stated response times must be agreed with the sender/requestor.

These KPI’s should form part of the Management Information:

Table 3

ROUTINE	20 working days	The majority of the work will fall into this category
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IMPORTANT	10 working days (this KPI is needed for NI samples only)	Cereals, Milk & Milk products are examples of work that will require an 'Important' response
URGENT	5 working days	This is rarely used but may be requested occasionally for ad hoc pieces of work

4.1 vice Credit Regime – For Sample Analysis Only

In the event that service levels for analysis delivery times are not met, the Service Credit Regime as stated in table 4 shall be implemented on a quarterly basis.

The Service Credit Regime will be tested against **ROUTINE and IMPORTANT** measures only.

This service credit regime is subject to annual review at either parties request and subject to Client agreement.

The Supplier will implement internal mechanisms to monitor the agreed Service Credits and KPI's to ensure delivery times are met. These will be closely evaluated, monitored and discussed at the contract review meetings with the Clients.

Any charges incurred by the Supplier in accordance with the Service Credit Regime will be actioned either monthly or quarterly in arrears against the analysis charges for the period, excluding VAT, as agreed with the Clients by credit note.

Table 4.

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Service Level	Threshold	Service Credit
1	95% and above	No Service credit due
2	90% - 94.9%	2% of Analysis Charges for the period measured
3	85% - 89.9%	3% of Analysis Charges for the period measured
4	80% - 84.9%	5% of Analysis Charges for the period measured
5	Below 80%	10% of Analysis Charges for the period measured

4.2 vice Credit Regime Definition

If 95% or above of the number of samples actioned are met within the agreed delivery timescales then no service credit amount is due.

If 90% - 94.9% of the number of samples actioned are met within the agreed delivery timescales then service credits in the amount of 2% of the charges for that period will be paid.

If 85% - 89.9% of the number of samples actioned are met within the agreed delivery timescales then service credits in the amount of 3% of the charges for that period will be paid.

If 80% - 84.9% of the number of samples actioned are met within the agreed delivery timescales then service credits in the amount of 5% of the charges for that period will be paid.

If below 80% of the number of samples actioned are met within the agreed delivery timescales then service credits in the amount of 10% of the charges for that period will be paid.

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This information will be supplied to the Clients quarterly.

5.0 Ith, Safety and Security

The Client's staff and the Supplier's staff are required by law to comply with Health & Safety legislation.

6.0 ting

The Supplier will be expected to market their services in order to publicise benefits and promote it's take up with the Client's staff. This would also include new initiatives and learning to ensure a better understanding of the function between the Supplier and the Client.

7.0 and Payment

The Clients will arrange payments via authorization by the individual business units.

The Supplier will need to invoice the relevant business unit following the work completed stating exactly what work has been undertaken.

Purchase Orders will be raised and payments sent from either HMRC or Border Force.

The Client will provide details of where invoices are to be sent in each Line of Business. The invoices should be in sufficient detail for the Client to verify the charges and as a minimum should contain the following details:

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- A reference to identify the invoice
- A sample reference
- The test undertaken
- Purchase Order number
- Cost Centre Code
- Office requesting the work
- Cost ex VAT
- VAT
- Total cost
- VAT Registration number
- Company registration number

8.0 Complaints and Disputes

The Client requires the Supplier to:

- Provide details of the individual responsible for dealing with complaints
- Provide monthly prints of all complaints received and details of their resolution.

Should a complaint arise it will be supplied in writing to the Supplier. On receipt the Supplier should:

- Acknowledge receipt of the complaint within 1 working day
- Provide the Client's contract manager with a copy of the complaint on receipt
- Provide a full response to the officer concerned within 10 working days of receipt, with a copy to the client's contract manager.

There may be instances where another laboratory working on behalf of a trader, is disputing the Supplier's findings or advice as issued to the Client.

In these instances the supplier will work with the Client to take reasonable steps to resolve such disputes. This may involve repeat testing of samples to verify the analysis carried out.

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Where such disputes cannot be resolved mutually the Client will make necessary arrangements for arbitration by a third party.

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Appendix A



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Appendix B - Indicative Volumes of Samples

Indicative volumes of samples for a 12 month period have been provided as an example of quantities and for information purposes to assist in the preparation of your bid. These numbers are not a guarantee of work and could increase or decrease

Type of Samples	Tariff Chapter	Number of Samples
Meat and edible Offal	2	7
Fish Crustacea molluscs and other Aquatic vertebrates	3	8
Edible fruit and nuts; peel of citrus fruit or melons	8	2
Cereals	10	7
Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	16	2
Preparations of cereals, flour, starch or milk; pastrycooks' products	19	31
Preparations of vegetables, fruit, nuts or other parts of plants	20	71
Residues and waste from the food industries; prepared animal fodder	23	25
<u>Total</u> – Food Testing		<u>153</u>
Tobacco	24	116
Miscellaneous Testing		9

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General paperwork Queries These are in addition to any paperwork completed for testing		31
<u>Overall Total</u>		<u>309</u>

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Appendix C

UK Travel & Subsistence

The advertised allowances are subject to change during term of the contract.

Mileage Allowances

Allowances shown are pence per mile

Higher Rate Mileage Allowance (limited to the first 10,000 miles in any financial year)	45.0p
Basic Rate Mileage Allowance	25.0p
Motor Cycle Rate	24.0p
Pedal Cycle Rate	20.0p
Driver Passenger Supplement; can be claimed by Vehicle Drivers for each Passenger	5.0p
Non-Driver Passenger Supplement; can be claimed by Vehicle Passengers	5.0p

Day Subsistence Rates

Actual additional expenditure will be paid within these limits:

One Meal Allowance	Where out of the office for more than 5 hours	Up to a maximum of £8.25
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Two Meal Allowance	Where out of the office for more than 10 hours	Up to a maximum of £17.75
Breakfast Allowance	Where the journey commences earlier than usual and before 06.30am, or the manager agrees it is unreasonable to have breakfast at home before embarking on the journey	up to a maximum of £8.25
Three Meal Allowance	Where away from home and permanent workplace for more than 13 hours	Up to a maximum of £26.00

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Appendix D

SECURITY REQUIREMENTS

1. Physical Security

The Contractor shall ensure that as a minimum:

- Protectively marked data is secured in appropriate security containers;
- Windows, locks, doors and entry controls at premises owned or used by the Contractor or its Staff in connection with the provision of the Services meet appropriate security standards;
- Access to the Clients Data is restricted to Staff who have passed the relevant Staff Vetting Procedures and have a demonstrable need to have access to the Clients Data to carry out their duties; and
- The Contractor shall ensure that plans are in place for dealing with and intercepting unauthorised visitors and intruders.

2. Accountability in respect of the Clients Data

The Contractor shall appoint at least one responsible person who is accountable for the assurance of the Clients Data used in delivering the Services. The responsible person shall be:

The following details are to be provided by Contractor following Contract award.

Name:

Address:

Telephone number:

Fax number:

Email:

The Contractor shall consult with the Client in relation to any proposed change to the person accountable for the assurance of the Clients Data.

3. Structured Risk Assessment for the Clients Data

- The Contractor shall ensure that it has undertaken a structured risk assessment which highlights when the Clients data is most vulnerable whilst in its care.

The Contractor shall ensure that:

- It records the security risks identified as a result of such risk assessment in a risk register with such risk register to be made available to the Client on request; and the results of such risk assessment are taken into account when planning, selecting, designing and modifying its facilities.

4. Data Handling Policies

The Contractor shall have in place documented policies and procedures which are consistent with the requirements of the Contract and which govern the delivery of the Services with respect to:

- The level of security clearance required by Staff before they can access the Clients Data;
- Where the Clients Data can be stored;

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- When the Clients Data can or cannot be transmitted electronically, by fax or discussed over the telephone; and
- When the Clients Data can or cannot be sent via post or courier.

Without prejudice to its obligations under the Data Protection Act (and the Terms and Conditions of Contract), the Contractor shall have clear policies in place which cover, as a minimum, the following principles of the DPA:

- Personal Data is processed fairly and lawfully;
- Personal Data is obtained and only used for specified and lawful purposes;
- Personal Data is adequate, relevant and not excessive;
- Personal Data is accurate and kept up to date;
- Personal Data is kept for no longer than is necessary;
- Personal Data is processed in accordance with the individual's rights;
- Personal Data is kept secure; and

The Contractor shall have in place clear policies for informing Staff of responsibilities, restrictions and considerations when sharing access to the Clients Data with other members of Staff.

The Contractor shall further procure that any guidance, policies, procedures and contracts placed in furtherance to the execution of this Contract with such third parties, shall, as a minimum, contain all requirements relating to the secure handling of information as set out within this Contract.

5. Breaches

- The Contractor shall have in place a documented procedure which addresses breaches of the requirements for handling the Clients Data (including the procedures the Contractor is required by this Schedule to have in place). Any breach or suspected breach must be reported immediately to the Clients contract manager by telephone.
- The Contractor shall ensure that clear guidance is provided to the Staff and any third parties it proposes to engage in the delivery of this Contract highlighting that deliberate or accidental compromise of protectively marked material may lead to disciplinary action and/or criminal proceedings.

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SCHEDULE S1

Cereal Import Work

1. BACKGROUND

In accordance with EU Regulations the control of and duty applicable to certain cereals is dependent on their quality, e.g. durum wheat, common wheat of high quality, flint maize, barley and corn gluten. This necessitates in the Client having to take samples for analysis, primarily when the duty in force varies between the different qualities, to determine that the products meet with criteria laid down in EU legislation. Where there are variances in the duty in force the need for sampling and analysis can be reduced if a consignment is accompanied by a quality certificate recognised by the Commission.

The reason for this analysis lies in the large revenue difference and duty reductions that can be afforded to high quality cereals.

2. REQUIREMENT

2.1 The Service Provider will be required to analyse certain cereals in accordance with the methods of analysis in EC Regulation 152/2009 to establish their quality against certain criteria contained within EU Regulations and determine the relevant Customs Nomenclature Code so that the correct rate of duty and control can be applied.

2.2 The analysis required will include tests for:

- Protein content,
- Specific weight,
- Impurity content (Schwarzbestatz),
- Vitreous grain content

2.3 Provide telephone advice/information when required by the Client.

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SCHEDULE S2

Alcohol

1. BACKGROUND

Samples containing, or thought to contain alcohol, will be submitted to the Service Provider in order to determine that they meet UK and EU regulations. This will include tariff and/or excise classification, duty liability, eligibility for drawback or duty relief, conformation of compliance with conditions and authorisations, and confirmation of illicit production.

2. REQUIREMENT

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2.1 Knowledge of the alcohol industry (both industrial and beverage producing) is necessary, as is familiarity with the characteristics of illicitly produced alcoholic products.

2.2 The type of analysis required will depend upon the product category, such as, Beers, Cider and Perry, Wines and Made-Wines, Spirits, Substances which attract Alcoholic Ingredients Relief, Denatures alcohol and Duty-free Spirits.

2.3 Beers

- Determine alcohol by volume (ABV) to 0.1% (in accordance with the Beer Regulations 1993, Schedule 4).
- Determine density or original gravity at 20°C.
- Determine the presence of certain spirituous essences, which would produce beverages defined as other than beer, where the ABV of the product exceeds 5.5%

2.4 Cider and Perry

- Alcoholic strength measurements are required to 0.01% ABV, for reporting to 0.1% ABV. This is particularly relevant at the upper limit of duty bandings. (Spirits Regulations 1991, regulation 18 as applied by regulation 20)
- Determine bar pressure measurement on unopened retail pack (suspected over-strength sparkling ciders only).
- Determine composition of liquid to confirm illicit production, by comparison with commercial products.
- Determine composition of additive to verify approved status.

2.5 Wines and Made Wines

- Alcoholic strength measurements are required to 0.01% ABV, for reporting to 0.1% ABV. This is particularly relevant at the upper limit of duty bandings. (Spirits Regulations 1991), Regulation 18 as applied by Regulation 20.
- Determine quantity of alcohol present.
- Determine type of alcohol.
- Determine alcohol content of composite goods.

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- Provide assessment of dry extract.
- Provide measurement of pressure (in relation to sparkling wine in bottle).
- Determine nature of spoilage.

2.6 Spirits

- Determine alcohol strength.
- Determine quantity of liquid and alcohol present.
- Determine percentage obscuration.
- Determine alcohol content of composite goods.
- Determine the original gravity of wort or wash.
- Verify that goods are eligible for exemption from duty under the Alcoholic Liquor Duties Act 1979 Act (ALDA Section 7 – ‘spirits used for medical purposes’).
- Identify other products eligible for remission of duty (ALDA Section 11 – ‘goods imported not for human consumption’).

2.7 Alcoholic Ingredients Relief

- Identify if sample is spirit, beer, wine, made-wine or cider, and establish the ABV band.
- Confirm beverage strength does not exceed 1.2% by volume.
- Confirm alcohol strength of chocolates does not exceed 8.5 litres per 100 kg of the finished product.
- Confirm alcohol strength of good does not exceed 5 litres per 100 kg of the finished product.

2.8 Denatured Alcohol

- Identify denaturants.
- Confirm levels of denaturants.
- Verify composition of manufactured denatured alcohols.
- Test finished products by comparison with comparable materials (taste panel).
- Evaluate wood naphtha substitutes against agreed authorised formulations (Denatured Alcohol Regulations 2005).
- Evaluate proposed new formulations for wood naphtha substitutes.

2.9 Duty-Free Spirits

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- Determine eligibility for relief from spirits duty.
- Test for the presence of denaturant/denatured spirits/esters.
- Determine whether any of the approved formulations of Denatured Alcohol is suitable for the stated application which is claimed.
- Verify unsuitability of Denatured Alcohol for proposed application.

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SCHEDULE S3

Milk & Milk Products

1. BACKGROUND

In accordance with EC Regulation 2535/2001 the Client is required to carry out mandatory physical checks on milk and milk products imported at reduced rates of duty. This necessitates samples being taken for analysis to determine that the products meet with criteria laid down in EU legislation. This will include tariff classification, duty liability, licence controls and confirmation of compliance with any other associated conditions and authorisations.

The reason for these controls lies in the large revenue difference and duty reductions afforded under some preferential arrangements and quotas.

2. REQUIREMENT

- 2.1** The Service Provider will be required to analyse samples according to the reference methods in EC Regulation 273/2008, to determine the correct Customs Nomenclature Code and butterfat content so that the correct rate of duty can be ascertained.
- 2.2** The Client is required to assess the results of the analysis within 20 days of the physical check.
- 2.3** The Service Provider may be expected to participate in an Inter-Laboratory Comparison Programme (ILCP), in respect of the fat content of butter imported from New Zealand at preferential rates of duty.

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SCHEDULE S4

Meursing Code Analysis

Background

Meursing code analysis is needed for EU related goods, and those requiring analysis imported prior to Jan 2021. These products are liable to additional duties and can be referred to as variable charges, additional codes or Meursing Codes. These are four figure codes commencing with the number 7 used in conjunction with the commodity code (digits 11-14).

The four figure numbers are determined by the percentage by weight of starch/glucose, sucrose, milk fat and milk proteins contained within processed products.

The legal basis for Meursing Codes lies within EU Regulation 510/2014. Annex I of the regulation lists the Meursing Codes along with the rates of specific duty that each of these codes attract.

The Meursing code table gives a way of expressing in terms of a unique number the percentage by weight of particular basic ingredients contained within a product. The ingredients are

- Starch/glucose
- Sucrose/invert sugar/isoglucose
- Milk fat
- Milk proteins

Link below takes you to a Look Up Meursing Code:

<https://www.gov.uk/additional-commodity-code>

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Requirement

The Supplier will be required to use the specific methods of analysis laid down in EC Regulation 118/2010 and updated by 617/2011 in order to produce the percentages for the 4 ingredients to determine the Meursing Code.

Links below:

[EU Regulation 118/2010](#)

[EU Regulation 617/2011](#)

Other methods may produce different results which could affect the additional code and therefore the amount of duty that should be paid.

These variable charges apply mostly to imported processed goods in chapters 17, 18, 19, 20 & 21 of the Tariff. Although certain dairy spreads falling under Commodity Code 04052010 and 04052030 along with some mixtures used in the manufacture of beverages and falling under 33021029 00 also attract a variable charge based on the Meursing code.

The supplier will be required to complete analysis on any of these goods in line with EU legislation.

Meursing Code Analysis Pricing

EU Regulations 118/2010 and 617/2011 cover the full range of tests required to produce the Meursing Code.

Certain products may not need the full Meursing code analysis, and the Supplier will be expected to use their expertise to only complete the necessary tests.

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For example non-milk products would not require the milk fat/protein analysis therefore these particular tests would not be deemed as a chargeable item.

The breakdown tab in the price model is to enable and understand future pricing for occasions when a full meursing analysis is not required.

NB Whilst the UK Tariff does not require the 4 digit meursing code, products will still need to be analysed to obtain the broken down ingredient list. This is necessary for the Tariff Classification team to be able to classify correctly.

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SCHEDULE S5

Tobacco Analysis

BACKGROUND

Samples containing, or thought to contain, tobacco and/or other smoking materials (eg herbal mixtures) will be submitted to the Contractor to determine if they meet UK and EU Regulations or not.

This will include tariff and/or excise classification, duty liability, eligibility for drawback or duty relief, confirmation of compliance with conditions and authorisations, confirmation of illicit production, determination of origin and assessment of further processing needed to render the product smokeable.

THE REQUIREMENT

Knowledge of the tobacco industry (both traditional tobacco manufacturers and pharmacological users) is necessary, as is familiarity with the characteristics of illicitly produced tobacco products.

The type of analysis required will depend on the product category such as cigarettes, cigars, hand rolling tobacco, other smoking tobacco, chewing tobacco, herbal smoking products and miscellaneous products. The Contractor will therefore be required to conduct analytical tests and provide results to the client in the following manner and for the following product categories.

Cigarettes

- Determine that products are classified as cigarettes under the terms of EU Directives and UK law.
- Identify the composition of products, including herbal products, tobacco and identification of specific additives.

Cigars

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- Determine that products are classified as cigars under the terms of EU Directives and UK law.
- Determine the size and weight of cigars.
- Analyse the content of cigars.

Hand Rolling Tobacco

- Determine that products are classified as Hand Rolling Tobacco under the terms of EU Directives and UK law.
- Analyse the proportional size of tobacco strands within samples.
- Identify the composition of products, including herbal products, tobacco and identification of specific additives.

Other Smoking Tobacco

- Determine that products are classified as other smoking tobacco under the terms of EU Directives and UK law.
- Determine the percentage of tobacco by weight and volume within a sample.
- Analyse the appropriateness of the classification i.e. could the product be used as a substitute for hand rolling tobacco.
- Assess what further processing would be required to render the product smokeable, and determine whether a product would be impossible to smoke irrespective of further processing.
- Identify the composition of products, including herbal products, tobacco and identification of specific additives.

Chewing Tobacco

- Determine that products are classified as chewing tobacco under the terms of EU Directives and UK law.
- Differentiate between chewing tobacco and oral snuff.
- Determine the tobacco content by weight and volume of samples.
- Identify the composition of products, including herbal products, tobacco and identification of specific additives.

Miscellaneous Products

- Determine whether miscellaneous tobacco products e.g. gel and blunt wraps fall within or outside the scope of UK or European excise laws.
- Detect the presence of tobacco in samples of suspected items.
- Determine whether products are smokeable in themselves or whether smokeable tobacco could be extracted from them.
- Identify the composition of products, including herbal products, tobacco and identification of specific additives.

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SCHEDULE 2.2

PERFORMANCE LEVELS

Performance Levels (Long Form)

DEFINITIONS

In this Schedule, the following definitions shall apply:

“Compensation for Unacceptable KPI Failure”	has the meaning given in Paragraph 4.1 (<i>Unacceptable KPI Failure</i>);
“Critical KPI Failure”	where: <ul style="list-style-type: none">(a) the Supplier fails to provide any part of the Services to a level which meets or exceeds the Critical KPI Failure Performance Threshold for the relevant KPI; and/or(b) there is a Repeat Failure Count of four (4) or more for the relevant KPI.
"Critical KPI Failure Performance Threshold"	means the relevant level of performance designated as such for a KPI and set out in the relevant table in Part I of Annex 1 of this Schedule 2.2;
“KPI”	the key performance indicators set out in Table 1 of Part I of Annex 1;
"KPI Failure"	the Supplier fails to provide any part of the Services in accordance with and so as to at least meet the relevant Target Performance Levels;
“Measurement Period”	in relation to a KPI, 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 KPI in the table set out at Annex 1;

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"Performance Monitoring Report"	has the meaning given in Paragraph 1.1 of Part B;
"Performance Review Meeting"	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Schedule, as further described in Paragraph 1.4 of Part B;
"Repeat KPI Failure"	has the meaning given in Paragraph 6.1 of Part A;
"Repeat Failure Count"	has the meaning given in Paragraph 6.2 of Part A;
"Service Credit Cap"	15% of the monthly Service Charges;
"Target Performance Level"	the minimum level of performance for a KPI which is required by the Authority, as set out in the table in Annex 1;
"Unacceptable KPI Failure"	the Supplier committing a KPI Failure in respect of 75% or more of the KPIs that are measured in a Service Period.

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PART A: KPI'S AND SERVICE CREDITS**1 GENERAL**

- 1.1 The Supplier shall perform the Services so that they meet or exceed the applicable Target Performance Levels for each KPI at all times.
- 1.2 The Target Performance Level is the minimum standard of performance which is required by the Authority.
- 1.3 The Supplier acknowledges that any KPI Failure, and any failure to measure or report on a KPI in accordance with Part B of this Schedule, shall entitle the Authority to the rights set out in this Schedule, including the right to any Service Credits and that:
 - (a) any Service Credit is a price adjustment to reflect the actual quality of service provided to the Authority and does not represent an estimate of the loss or damage that may be suffered by the Authority in respect of the KPI Failure which gives rise to the Service Credit; and
 - (b) the crediting of any Service Credit 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).

2 KPI'S

- 2.1 Subject to Clause 5.13(d) (*Optional Services*), each KPI which relates to a Service shall apply and be measured from the relevant Operational Service Date of the relevant Service(s) to which that KPI relates (unless otherwise stated in Annex 1).
- 2.2 The Supplier shall monitor its performance of the Services against the Target Performance Level for each KPI and shall send the Authority a Performance Monitoring Report in accordance with Part B of this Schedule.
- 2.3 If the Supplier fails to measure or report on a KPI in accordance with Part B of this Schedule, the Supplier shall be deemed to have failed to meet the Target Performance Level for the relevant KPI in the relevant Measurement Period, unless the Authority otherwise agrees in writing.
- 2.4 Each Target Performance Level and/or Critical KPI Failure Performance Threshold may only be changed as a result of the application of:
 - (a) the Change Control Procedure;
 - (b) the continuous improvement requirements set out in Schedule 7.3 (*Value for Money*) of this Agreement which will be addressed through the Change Control Procedure; or

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- (c) the agreed results of a benchmarking exercise which is carried out pursuant to the provisions of Schedule 7.3 (Value for Money) which will be addressed through the Change Control Procedure.

3 KPI FAILURE

3.1 If in any Service Period, a KPI Failure occurs:

- (a) subject to Paragraph 4.1(b) (Compensation for Unacceptable KPI Failure), Service Points shall accrue and shall be calculated in accordance with this Part A;
- (b) the relevant Service Credits shall be deducted from the Service Charges in accordance with Paragraph 9 (*Service Credits - Reduction of Service Charges*);
- (c) the Supplier shall comply with the Rectification Plan Process; and
- (d) without prejudice to the Authority's other rights and remedies, the Authority shall be entitled to terminate the Agreement if the KPI Failure is an Unacceptable KPI Failure or Critical KPI Failure.

4 UNACCEPTABLE KPI FAILURE

4.1 If in any Service Period an Unacceptable KPI Failure occurs or is determined:

- (a) the Authority shall be entitled to withhold and retain as compensation for the Unacceptable KPI 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 KPI Failure**"); and
- (b) if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue in respect of the KPI Failures which made up the Unacceptable KPI Failure,

provided that the operation of this Paragraph 4.1 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 KPI Failure.

4.2 The Supplier agrees that the application of Paragraph 4.1 is commercially justifiable where an Unacceptable KPI Failure occurs.

5 SERVICE POINTS

- 5.1 If the level of performance of the Supplier during a Measurement Period meets or exceeds the Target Performance Level in respect of a KPI, no Service Points shall accrue to the Supplier in respect of that KPI.
- 5.2 If the level of performance of the Supplier during a Measurement Period is below the Target Performance Level in respect of a KPI, Service Points shall accrue to the Supplier in respect of that KPI.

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- 5.3 Subject to Paragraph 5.4, the number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the relevant number as set out in Annex 1 (in its form at the relevant time and as may be adjusted in accordance with this Agreement) depending on the performance level achieved, unless:
- (a) Paragraph 2.3 (failure to measure or report on a KPI) applies, in which case Service Points shall accrue to the Supplier in respect of that deemed KPI Failure at the highest available level associated with that KPI; and/or
 - (b) the KPI Failure is a Repeat KPI Failure in which case the provisions of paragraph 6 shall also apply.
- 5.4 The Authority shall be entitled to redistribute Service Points between KPIs (at its sole discretion by giving at least one (1) months' notice in writing to the Supplier but without having to follow the Change Control Procedure), subject to the following restrictions:
- (a) the maximum number of Service Points that can be allocated to any one (1) single KPI is 30 (without prejudice to the application of Paragraph 6 below in relation to Repeat Failures);
 - (b) no more than 60 Service Points can be reallocated across all of the KPIs in any one Measurement Period; and
 - (c) any such reallocation shall take effect at the start of the next Measurement Period to commence for the relevant KPIs following service of notice in writing by the Authority in accordance with this Paragraph 5.4.
- 5.5 For the avoidance of doubt, Service Points (and accordingly Service Credits) shall be accrued cumulatively by the Supplier (and for each KPI against which there is a relevant KPI Failure). Service Credits accrued by the Supplier for all KPI Failures in a Service Period shall be added together to give the total Service Credit due from the Supplier in respect of that Service Period.

6 REPEAT KPI FAILURES

- 6.1 If a KPI Failure occurs in respect of the same KPI in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".
- 6.2 In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat KPI Failures for each KPI (the "**Repeat Failure Count**"). For example, if a KPI Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).
- 6.3 When, in a Measurement Period, a KPI with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).

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- 6.4 Without prejudice to the Authority's other rights and remedies, there shall be no upper limit to the Repeat Failure Count. However, a Repeat Failure Count of four (4) or more shall be deemed to be a Critical KPI Failure by the Supplier against the relevant KPI.
- 6.5 The number of Service Points that shall accrue to the Supplier in respect of a Measurement Period and for a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P + (P * RFC * 0.5)$$

where:

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

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 (as updated) depending on the performance level achieved; and

RFC = the Repeat Failure Count.

7 REMEDIES

- 7.1 Without prejudice to the Authority's other rights and remedies in this Agreement, the Parties acknowledge and agree that Critical KPI Failures (including Repeat KPI Failures at the level referred to at paragraph 6.4 above) and Unacceptable KPI Failures represent a level of non-performance that would entitle the Authority to invoke its termination rights set out in Clause 33.1(b) (*Termination by the Authority*).
- 7.2 The Parties agree that Service Credits are a non-exclusive remedy, and shall be without prejudice to any rights or remedies of the Authority under this Agreement or at Law including any entitlement that the Authority may have to damages and/or to terminate.
- 7.3 Once any necessary allocation of Service Points has been determined and made, the Parties shall make the necessary adjustments to the next invoice to be raised by the Supplier pursuant to Paragraph 9 (*Service Credits - Reduction of Service Charges*).

8 SERVICE CREDITS AND AMOUNT AT RISK

- 8.1 The maximum Service Credits which shall be payable by the Supplier in a Service Period in respect of a failure to meet the relevant KPIs, irrespective of the number of Service Points accrued, shall not exceed the Service Credit Cap.
- 8.2 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period and by reference to those KPIs for which the Measurement Period ended in or at the end of that Service Period.
- 8.3 For each Service Period:

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- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period; and
- (b) the total Service Credits applicable in respect of the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

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

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

X is [1]%; and

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

The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, amongst other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

9 SERVICE CREDITS - REDUCTION OF SERVICE CHARGES

- 9.1 This Paragraph 9 sets out the mechanism by which Service Credits are applied to invoices.
- 9.2 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of this Schedule.
- 9.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.2(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of this Schedule.
- 9.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 9.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

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10 KPI FAILURE - AUTHORITY CAUSE

- 10.1 If the Supplier fails to provide the Services in accordance with the Target Performance Levels but 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 be liable to accrue Service Credits in respect of that KPI Failure but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

11 FORCE MAJEURE EVENT

- 11.1 The Authority shall not be entitle to receive Service Credits or withhold and retain any of the Service Charges as Compensation for Unacceptable KPI Failure to the extent that a KPI Failure has been caused by the Force Majeure Event.

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PART B: PERFORMANCE MONITORING**1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Representative which summarises the performance by the Supplier against each of the applicable Target Performance Levels as more particularly described in Paragraph 1.2 of this Part B (the “**Performance Monitoring Report**”).
- 1.2 The Performance Monitoring Report shall be in such format as requested by the Authority from time to time, but shall contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each KPI the actual performance achieved over the Service Period and the relevant Measurement Period which has just ended, and that achieved over the previous three (3) relevant Measurement Periods;
- (b) a summary of all KPI Failures that occurred during or which have occurred by the end of the Service Period;
- (c) the Severity Level of each KPI Failure which occurred during the Service Period or by the end of it;
- (d) which KPI Failures remain outstanding and progress in resolving them;
- (e) for any Critical KPI Failures occurring during or by the end of the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- (g) for any Repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits (and any Compensation for Unacceptable Performance Failure) to be applied, indicating the KPI Failure(s) to which the Service Credits or Compensation for Unacceptable KPI Failure (as applicable) relate;
- (j) relevant particulars of any aspects of the Supplier’s performance which fail to meet the requirements of this Agreement;

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- (k) such other details as the Authority may reasonably require from time to time;

Information in respect of previous Service Periods

- (l) a rolling total of the number of KPI Failures that have occurred over or by the end of the past six Service Periods, including any Repeat Failure Counts; and
- (m) the amount of Service Credits that have been incurred by the Supplier over or by the end of the past six Service Periods.

Performance Disputes

- 1.3 The Performance Monitoring Report shall be reviewed by the Authority including at the next Performance Review Meeting held in accordance with Paragraph 1.4. The Supplier acknowledges and agrees that the Authority may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular KPI. In the event of any dispute or difference between the Supplier's assessment and the Authority's assessment in respect of a KPI the Authority's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Supplier shall be entitled to subsequently escalate any such dispute or difference in accordance with the Dispute Resolution Procedure.
- 1.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. These meetings ("**Performance Review Meetings**") shall (unless otherwise agreed):
 - (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.
- 1.6 In addition to the requirements above and elsewhere in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably request from time to time in order to verify the level of the performance of the Supplier.

2 PERFORMANCE VERIFICATION

The Authority reserves the right to verify any aspect of the Services and the Supplier's performance under this Agreement against the Target Performance Levels, including by sending test transactions through the IT Environment or otherwise.

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3 BALANCED SCORECARD REPORTS

NOT USED

ANNEX 1: KPI'S**PART I: KPI'S TABLE**

The KPIs that shall apply to the Services are set out below:

Table 1 - KPIs

This KPI Table refers to the working days the Client expects the Sample Analysis results/findings to be returned by.

ROUTINE	20 working days	The majority of the work will fall into this category
IMPORTANT	10 working days (this KPI is needed for NI samples only)	Cereals, Milk & Milk products are examples of work that will require an 'Important' response
URGENT	5 working days	This is rarely used but may be requested occasionally for ad hoc pieces of work

PART II: SERVICE CREDIT REGIME (SAMPLE ANALYSIS ONLY)

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II.1 In the event that service levels for analysis delivery times are not met, the Service Credit Regime as stated in table 4 shall be implemented on a quarterly basis.

II.2 The Service Credit Regime will be tested against routine and important measures only.

II.3 This service credit regime is subject to annual review at either parties request and subject to Client agreement.

II.4 The Supplier will implement internal mechanisms to monitor the agreed Service Credits and KPI's to ensure delivery times are met. These will be closely evaluated, monitored and discussed at the contract review meetings with the Clients.

II.5 Any charges incurred by the Supplier in accordance with the Service Credit Regime will be actioned either monthly or quarterly in arrears against the analysis charges for the period, excluding VAT, as agreed with the Clients by credit note.

Service Level	Threshold	Service Credit
1	95% and above	No Service credit due
2	90% - 94.9%	2% of Analysis Charges for the period measured
3	85% - 89.9%	3% of Analysis Charges for the period measured
4	80% - 84.9%	5% of Analysis Charges for the period measured
5	Below 80%	10% of Analysis Charges for the period measured

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SCHEDULE 2.4

SECURITY MANAGEMENT

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Security Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Breach of Security”	<p>the occurrence of:</p> <ul style="list-style-type: none">(a) 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(b) 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(c) a failure to comply with the personnel security requirements, as set out in the Security Management Plan, <p>in each case as may be more particularly set out in the security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements;</p>
“CESG”	the UK Government's national technical authority for information assurance;
“CPA”	the CESG Commercial Product Assurance scheme;
“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;

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2 SECURITY REQUIREMENTS

- 2.1 The Supplier shall comply with the Baseline Security Requirements and the Security Management Plan and the Supplier shall ensure that its Security Management Plan fully complies with the Baseline Security Requirements and the Security Policy Framework.
- 2.2 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 2.3 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.
- 2.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to the Change Control Procedure the Supplier shall continue to perform the Services in accordance with its existing obligations.

3 PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- (a) is in accordance with the Law and this Agreement;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and
 - (d) complies with the Baseline Security Requirements and the Authority's specific security requirements as described in the Services Description as appropriate.
- 3.3 In the event of any inconsistency in the provisions of the standards, guidance and requirements listed in Paragraph 3.2 above, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

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3 MALICIOUS SOFTWARE

- 3.1 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.
- 3.2 Notwithstanding Paragraph 3.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 3.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 3.2 shall be borne by the Parties as follows:
- (a) by the Supplier where the Malicious Software originates from the Software (except where the Authority has waived the obligation set out in Paragraph 3.1) 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
 - (b) otherwise by the Authority.

4 SECURITY MANAGEMENT PLAN

- 4.1 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.
- 4.2 The Security Management Plan shall:
- (a) be based on the Supplier's final response to the Authority's Security Questionnaire, a copy of which is set out in Annex 2;
 - (b) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
 - (c) 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;

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- (d) 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;
 - (e) 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;
 - (f) set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;
 - (g) 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.
- 4.3 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.
- 4.4 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.
- 5 AMENDMENT AND REVISION OF THE SECURITY MANAGEMENT PLAN**
- 5.1 The 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:

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- (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Services and/or associated processes;
 - (c) any new perceived or changed security threats; and
 - (d) any reasonable change in requirements requested by the Authority.
- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
 - (a) suggested improvements to the effectiveness of the Security Management Plan;
 - (b) updates to the risk assessments;
 - (c) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the 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.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the 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.
- 6 BREACH OF SECURITY**
- 6.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or attempted Breach of Security.
- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 6.1, the Supplier shall:
 - (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
 - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (ii) 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;
 - (iii) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

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- (iv) 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);
 - (b) as soon as reasonably practicable provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority; and
 - (c) maintain auditable records of such Breach of Security in accordance with Schedule 8.2 (Reports and Records).
- 6.3 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 Security Management Plan 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 Security Management Plan shall be at no cost to the Authority.

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ANNEX 1: BASELINE SECURITY REQUIREMENTS**1 Higher Classifications**

- 1.1 The Supplier shall not handle Authority Materials 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.

2 End User Devices

- 2.1 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.
- 2.2 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.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Supplier and Authority recognise the need for the Authority Data 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 Authority Data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of Authority Data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. The Authority's agreement to any such change shall be entirely at the Authority's discretion and, in so far as the change in location entails the transfer of Personal Data to a location outside the UK, shall only be given if a Change Request is expressly permitted by Paragraph 1.8 of Schedule 2.8 (*Data Processing and List of Sub-processors*), and such agreement shall in all circumstances be dependent upon the storage, processing and management of any Authority Data being carried out offshore within:

- (a) the European Economic Area (EEA);

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- (b) the US if the Supplier and or any relevant Sub-contractor have signed up to an agreement which ensures a level of protection which has been defined as adequate by the EU Commission; or
- (c) 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.

3.3 The Supplier shall:

- (a) provide the Authority with all Authority Data on demand in an agreed open format;
- (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

4 Networking

- 4.1 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).
- 4.2 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.

5 Security Architectures

- 5.1 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 Materials.
- 5.2 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.

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6 Personnel Security

- 6.1 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).
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 The Supplier shall ensure that Supplier Personnel complete the security questionnaire as provided by the Authority from time to time.

7 Identity, Authentication and Access Control

- 7.1 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.

8 Audit and Monitoring

- 8.1 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:

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- (a) 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.
 - (b) 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.
- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with Paragraph 8.1 for a period of at least six (6) months.

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**Security Plan Questionnaire –
Medium**

REDACTED

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SCHEDULE 2.5

INSURANCE REQUIREMENTS

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Insurance Requirements**1 OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 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, for example UK employers' liability insurance and/or motor third party liability insurance, as may be required by applicable Law (together the "Insurances").
- 1.2 The Insurances shall be:
- (a) maintained in accordance with Good Industry Practice;
 - (b) (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;
 - (c) taken out and maintained with insurers who are of good financial standing, are appropriately regulated by the applicable regulatory body and are in good standing with that regulator; and
 - (d) maintained for at least six (6) years after the end of the Term.
- 1.3 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 Agreement and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Agreement, the Supplier shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

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

4 EVIDENCE OF INSURANCES

- 4.1 The Supplier shall upon the Effective Date and within 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.

5 AGGREGATE LIMIT OF INDEMNITY

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

6 CANCELLATION, SUSPENSION, TERMINATION OR NON-RENEWAL

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

7 INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the 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.
- 7.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible.

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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.

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ANNEX 1: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 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.

3 Limit of indemnity

Not less than **£5,000,000 (five million pounds)** in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but **£15,000,000 (fifteen million pounds)** in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

Worldwide

5 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.

6 Cover features and extensions

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

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7 Principal exclusions

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

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PART C: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3 Limit of indemnity

Not less than *£5,000,000 (five million pounds)* in respect of any one claim, the number of claims being unlimited, *but £15,000,000 (fifteen million pounds)* in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial Limits

Worldwide

5 Period of insurance

From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of six (6) years thereafter.

6 Cover features and extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

7 Principal exclusions

7.1 War and related perils

7.2 Nuclear and radioactive risks

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PART D: 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.

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SCHEDULE 2.8

DATA PROCESSING AND LIST OF SUB-PROCESSORS

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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 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;
“Off-shore Location”	any place outside of the United Kingdom;
“Personal Data Breach”	means: <ul style="list-style-type: none">(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;
“Processor”	has the meaning given in the Relevant Data Protection Laws;

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“Sanitised Personal Data”

data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;

"Standard Clauses"**Contractual**

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 UK 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/or 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/or Sanitised Personal Data, unless prohibited by law;
- (b) 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 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;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

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- (d) 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);
- (e) 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:
 - (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;
 - (iii) 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;
 - (iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Relevant Data Protection Laws); and
 - (v) 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 UK GDPR. Such notification shall as a minimum:
 - (i) 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;
 - (ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
 - (iii) describe the likely consequences of the Personal Data Breach; and
 - (iv) describe the measures taken or proposed to be taken to address the Personal Data Breach.

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- (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:
 - (i) documenting any such Personal Data Breaches and reporting them to any supervisory authority;
 - (ii) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
 - (iii) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;
- (h) notify the Authority immediately if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Request (or purported Data Subject Request);
 - (B) a request to rectify, any inaccurate Personal Data;
 - (C) a request to have any Personal Data erased;
 - (D) a request to restrict the Processing of any Personal Data;
 - (E) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any third party;
 - (F) an objection to any Processing of Personal Data;
 - (G) any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) 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);

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- (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 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.
- 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/or 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/or 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.

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- 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/or 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/or 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/or Sanitised Personal Data;
 - (c) act in accordance with this Paragraph 1.
- 1.8 NOT USED
- 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

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- (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 to 34 of the UK GDPR, including by:
 - (i) pseudonymising or encrypting Personal Data and/or Sanitised Personal Data, where appropriate;
 - (ii) ensuring the ongoing confidentiality, integrity, and availability of Processing systems and services;
 - (iii) 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
 - (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 UK 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 UK 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 UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

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- (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.
- 1.12 For the avoidance of doubt, nothing in this Agreement relieves the Supplier of its own direct responsibilities and liabilities under the UK GDPR.

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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

REDACTED

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Part B: Sub-processors as at the Effective Date

NOT USED

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SCHEDULE 3

AUTHORITY RESPONSIBILITIES

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Authority Responsibilities

1 INTRODUCTION

- 1.1 The responsibilities of the Authority specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

The Authority shall:

- (a) 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;
- (b) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Mobilisation Plan;
- (c) 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
- (d) 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).

3 SPECIFIC OBLIGATIONS

NOT USED

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SCHEDULE 4.1

SUPPLIER SOLUTION

REDACTED

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SCHEDULE 7.1

CHARGES AND INVOICING
(Time and Material Cost Model)

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Charges and Invoicing

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Capped ADR”** in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism
- “Certificate of Costs”** a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in ANNEX 3: Pro-forma Certificate of Costs;
- “Costs”** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:
- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
 - (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to UK GAAP, which shall include the cost to be charged in respect of Assets

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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;

- (c) 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;
- (d) Reimbursable Expenses to the extent these are properly incurred in delivering the Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism in accordance with Paragraph 7 of Part A of Schedule 7.1 (Charges and Invoicing) but excluding:
 - (i) Overhead;
 - (ii) financing or similar costs;
 - (iii) 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;
 - (iv) taxation;
 - (v) fines and penalties;
 - (vi) any amounts payable to the Authority as Service Credits and Delay Payments;
 - (vii) any amounts payable under Schedule 7.3 (*Value For Money*); and
 - (viii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“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

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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;

“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:

- (a) 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
- (b) 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;

“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;

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PART A: PRICING

1 INTRODUCTION

1.1 This Schedule 7.1 (*Charges and Invoicing*) is to set out the provisions relating to:

- (a) Milestone Payments;
- (b) Service Charges;
- (c) expenses and capital assets;
- (d) adjustments to the Charges, including Service Credits, Delay Payments and payments for Delays due to Authority Cause;
- (e) changes to the Charges; and
- (f) invoicing and payment terms.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

2.1. Milestone Payments and Charges relating to each Service shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in the Financial Model.

2.2. Where the Financial Model or an Order indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:

- (a) the day rates set out in Table 1 of the Financial Model shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its Man Day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of the Financial Model unless the Supplier has obtained the Authority's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;
 - (iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying the appropriate rates against:
 - (A) the total number of Man Days expended by the Supplier in relation to the relevant Milestone; or

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- (B) the total number of Many Days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and
 - (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
- (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.

3 EXPENSES

- 3.1. Where the Authority so agrees in writing the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.
- 3.2. The Authority shall provide a copy of its current expenses policy to the Supplier upon request.
- 3.3. Except as expressly set out in Paragraph 3.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
 - (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

4 CAPITAL ASSETS

- 4.1. 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.

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PART B: CHARGING MECHANISMS

1 DEFINITIONS

In this Part B, the following definitions shall apply:

“Milestone Retention” has the meaning given in Paragraph 2.3 of this Part.

2 MILESTONE PAYMENTS

2.1 Subject to the provisions of Paragraph 2.5 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.

1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate and the relevant Supporting Documentation.

2.3 The **“Milestone Retention”** for each Milestone shall be 10% 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.

2.4 Following the issue of a Certificate of Costs in accordance with Paragraph 0 the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone (as applicable).

Release of Milestone Retentions

2.5 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 3) of Annex 2 as corresponding to the CPP Milestone Charge Number for that Achieved CPP Milestone provided that such amount has not been paid before such CPP Milestone.

3 SERVICE CHARGES

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

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

4 CHARGES FOR MOBILISATION

4.1 **Not Used**

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5 CHARGES FOR ORDERS

Not Used

6 CHARGES FOR TERMINATION SERVICES

Not Used

7 OPTIONAL SERVICES

Not Used

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PART C: ADJUSTMENTS TO THE CHARGES**1 DEFINITIONS**

In this Part C, the following definitions shall apply:

“Delay Payment Rate”	has the meaning given in Paragraph 2.1 of this Part.
“Allowable Assumption”	means the assumptions set out in Annex 5;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 10 in the table in Annex 5.

2 DELAY PAYMENTS

2.1 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:

- (a) at the daily rate (the **“Delay Payment Rate”**) determined in accordance with Paragraph 2.2;
 - (b) from (but excluding) the relevant Milestone Date to (and including) the earlier of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) 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
 - (c) on a daily basis, with any part day’s Delay counting as a day,
- except that the Authority shall not be entitled to receive Delay Payments to the extent that the Achievement of any Milestone is affected by a Force Majeure Event.

2.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

- (a) 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;
- (b) 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 4 of Table 1 of Annex 2 for the Key Milestone; or

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- (c) where the Supplier has given the Authority more than six (6) months' prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone.
- 2.3 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates:
 - (a) 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
 - (b) do not impose a detriment on the Supplier out of all proportion to the legitimate interests of the Authority.
- 2.4 Delay Payment Rates are stated exclusive of VAT.
- 2.5 The Delay Payment in respect of a Key Milestone 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:
 - (a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone; and
 - (b) 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.
- 2.6 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:
 - (a) the Authority is entitled to or does terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*); or
 - (b) the Delay exceeds the Delay Deduction Period.
- 3 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE**
- 3.1 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:
 - (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:

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- (i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and
- (ii) 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;

- (b) 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;
- (c) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 3 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.

- 3.2 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.

4 SERVICE CREDITS

- 4.1 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.

5 CHANGES TO CHARGES

- 5.1 Any changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.3 (*Change Control Procedure*).

6 ALLOWABLE ASSUMPTIONS

Not Used

7 FINANCIAL MANAGEMENT

- 7.1 The Supplier shall comply with its obligations with respect to Financial Management set out in Schedule 7.5 (*Financial Reports and Audit Rights*).

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- 7.2 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

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PART D: COST MODEL

1 COST MODEL

1.1 The Supplier shall ensure that the Cost Model shall:

- (a) provide sufficient detail for the Authority to have visibility of all the costs to be incurred by the Supplier and of the Charges to be paid in respect of the provision of the Services;
- (b) provide visibility of the input costs for providing the Services throughout the Term, excluding mark-up;
- (c) provide a reasonably skilled and experienced individual with a full analysis of the Supplier's capital and operating costs and the assumptions used to develop and modify the Charges set out in this Schedule 7.1 (*Charges and Invoicing*);
- (d) be laid out in a clear and logical manner. The overall flow of information in the Cost Model shall flow from inputs, to calculations, to outputs, with the final output being in tables. Any formulae in the Cost Model shall not contain a mixture of inputs and calculations. Any column labelling in the Cost Model shall be consistent between worksheets;
- (e) clearly show the calculation of any financing charges associated with outstanding balances (between costs incurred and revenue received); and
- (f) provide visibility of profit (and the calculation of profit) both as a value and as a percentage, including Supplier Profit, Supplier Profit Margin and the Anticipated Contract Life Profit Margin; and
- (g) ensure that each iteration to the Cost Model is a true and fair reflection of the Costs, anticipated Supplier Profit, anticipated Supplier Profit Margin and Anticipated Contract Life Profit Margin forecast by the Supplier.

1.2 The Supplier shall, if requested by the Authority, provide (or procure the provision of) the above level of information in relation to the costs and expenses to be incurred by any of its Sub-contractors or third party suppliers.]

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PART E: INVOICING AND PAYMENT TERMS**1 SUPPLIER INVOICES**

- 1.1 The Supplier agrees and acknowledges that it shall not raise an invoice without having procured a purchase order number generated from HMRC's e-Portal trading system (MyBuy) in accordance with Clause 10.2 of this Agreement and that discrete purchase order numbers shall be used in respect of each Service and each Order.
- 1.2 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.
- 1.3 The Supplier shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates;
 - (f) the dates between which the Services that are the subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) 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;
 - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - (l) 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

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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);

- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - (n) 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);
 - (o) For Service Charges charged on a Fixed Price Mechanism, the invoice shall contain the "top line" detail of the relevant Service; and
 - (p) 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.
- 1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Authority has implemented an Ariba based electronic transaction system (myBUY). Each draft schedule of Charges, invoice and any Supporting Documentation required to be submitted in accordance with this Part E shall be submitted, as directed by the Authority from time to time via the Authority's electronic transaction system.
- 1.5 The Supplier shall on the first Working Day of the Service Period following the Service Period to which the proposed invoice relates, submit to the Authority:
- (a) in a format specified by the Authority, a draft schedule of Charges payable for the Services performed by the Supplier in the preceding Service Period; and
 - (b) all applicable Supporting Documentation (in a format specified by the Authority). 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 to the Authority from time to time to substantiate an invoice.
- 1.6 Each draft schedule of Charges will be submitted using the Authority's electronic transaction system. The Parties shall endeavour to agree the draft schedule of Charges within five (5) Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice via the electronic transaction system.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.8 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

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the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

- 1.9 If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.6 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.
- 1.10 The Supplier may only raise invoices as follows:
- (a) In respect of Milestones (both in respect of Transition and Termination Services), no earlier than the Achievement of the relevant Milestone; and
 - (b) For Service Charges on the second Working Day of the Service Period following the Service Period to which the Charge relates.

2 PAYMENT TERMS

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

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ANNEX 1: FINANCIAL MODEL

NOT USED

HMRC Group Price List

TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

NOT USED

TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

NOT USED

HMRC Group Price List

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

NOT USED

HMRC Group Price List

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

NOT USED

HMRC Group Price List**ANNEX 4: COST MODEL**

1. The rates and prices set out in this Cost Model shall be subject to adjustment by way of indexation in each Contract Year.
2. Any adjustment to the rate and prices shall be subject to Schedule 8.3, Change Control Procedure, and the relevant adjustment shall be:
 - 2.1. applied following completion of the procedure in Schedule 8.3, Change Control Procedure provided such date occurs no earlier than the first anniversary of the Effective Date and thereafter in each Contract Year; and
 - 2.2. determined by multiplying the relevant rate or price set out in the Cost Model by a percentage not exceeding the percentage increase or changes in the Consumer Price Index published for the preceding 12 months.

Representational Services and Client Meetings

A day is considered to be 8 productive hours, half day is considered to be 4 productive hours. Generally, travelling time will be deemed as the cost of business however depending on circumstances the supplier may have the opportunity to charge half the day rate with the Client's approval.

Item	Half Day Rate	Full Day Rate
Attendance at a WCO Scientific Committee Meeting		
Attendance at a GCL (Group for the Co-ordination of Laboratories) Meeting		

Expert Witness, Witness Statements and Court Appearances

A day is considered to be 8 productive hours, half day is considered to be 4 productive hours. Generally, travelling time will be deemed as the cost of business however depending on circumstances the supplier will have the opportunity to charge half the day rate with the clients approval.

Item	Half Day Rate	Day rate	Hourly Rate
Attendance at UK Court (England, Ireland, Scotland or Wales)			
Attendance at EU Court			

HMRC Group Price List

Provision of Witness Statements			
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Professional Advice and Consultancy

Item	Hourly Rate
Technical problems that need investigation or lengthy consultation	

Cool box Returns

Return of empty cool boxes to the originating office. (Price is based on a parcel delivery up to 2 working days throughout most of UK's mainland)

Item	Return Delivery Price per Item
Small Cool Box (Type 1) Dims 45x38x28cm @ 2kg	
Small Cool box (Type 2) Dims 36x24x36cm @ 2.08kg	
Medium Cool Box (Type 3) Dims 60x32x35cm @ 3.78kg	
Large Cool Box with wheels (Type 4) Dims 89x47x44cm @ 8kg	
Large Cool Box (Type 5) Dims 56x33x38cm @ 3.25kg	
Extra Large Cool Box (Type 6) Dims 142x43x48cm @ 10kg	

Product Analysis

HMRC Group Price List

Test	Price per Test
Visual	
Tariff Classification	
Sugar	
Microscopy	
Starch	
Protein	
Moisture	
Brix	
Fat ws	
Milkfat	
DNA	
Salt	
Volatile Acidity	
Protein Moisture	
Hectolitre	
Impurities	
Iodine	
Rice	
Sensory Evaluation	
Volatiles- Tobacco	
Comparisons (for counterfeit purposes)	
MI	

HMRC Group Price List

Cut Width	
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Bulk Pricing Discount

REDACTED

HMRC Group Price List

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ANNEX 5: ALLOWABLE ASSUMPTIONS

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SCHEDULE 7.2

PAYMENTS ON TERMINATION

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Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Supplier Personnel”** any Supplier Personnel who:
- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
 - (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) forty (40) Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
 - (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
 - (iv) the Supplier can demonstrate to the satisfaction of the Authority:
 - (A) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (B) are genuinely being dismissed for reasons of redundancy; and
 - (C) 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;

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“Breakage Costs Payment”	<p>an amount equal to the lower of:</p> <p>(a) the sum of the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3; and</p> <p>(b) the amount specified in Paragraph 3.2;</p>
“Contract Breakage Costs”	<p>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;</p>
“Dedicated Supplier Personnel”	<p>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;</p>
“Profit Already Paid”	<p>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;</p>
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <p>(c) any statutory redundancy payment; and</p> <p>(d) 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;</p>

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“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) (<i>Termination by the Authority</i>) to terminate this Agreement for convenience on a specified Termination Date;
“Termination Estimate”	has the meaning given in Paragraph 10.2;
“Total Costs Incurred”	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Cost 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 Cost 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 (<i>Charges and Invoicing</i>) as such Costs and Charges are forecast in the Cost Model;
“Unrecovered Payment”	an amount equal to the lower of: <ul style="list-style-type: none"> (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and (b) 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.

2 TERMINATION PAYMENT OVERVIEW

The Termination Payment payable pursuant to Clause 34.3(a) (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

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

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- (a) 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;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

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

- (a) the relevant limit set out in Annex 1; and
- (b) one hundred and twenty per cent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 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.

3.4 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

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

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
- (b) the Supplier can demonstrate:
 - (i) 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
 - (ii) have been entered into by it in the ordinary course of business.

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- 3.6 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.
- 3.7 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:
- (a) 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
 - (b) Assets not yet installed at the Termination Date.

4 LIMITATION ON UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) one hundred and twenty per cent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) 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 Cost Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) in relation to Supplier Personnel, seeking to redeploy Supplier Personnel within the Supplier organisation;
 - (c) 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
 - (d) 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.

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- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.4 (*Dispute Resolution Procedure*).

6 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.

7 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*).

8 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.

9 NO DOUBLE RECOVERY

- 9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 9.2 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.
- 9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.
- 10 ESTIMATE OF TERMINATION PAYMENT**
- 10.1 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.

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- 10.2 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:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.
- 10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 10.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

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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:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment
Anytime in the first Contract Year	To be determined if necessary	To be determined if necessary
Anytime in the second Contract Year	To be determined if necessary	To be determined if necessary
Anytime in Contract Years 3 - 5	To be determined if necessary	To be determined if necessary

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SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

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Financial Reports and Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 4 of Part A to this Schedule;
“Open Book Data”	complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to: <ul style="list-style-type: none"> (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit

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Margin; and

(iv) Reimbursable Expenses;

- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period;

Programme Board

the representatives identified as escalation level 2 or in Paragraph 5 (*Contract Management Roles and Dispute Escalation Levels*) of Schedule 8.1 (*Governance*)

“Rolling Financial Statement”

the statement in the form set out in Annex 1 showing financial performance for the Contract Year to date and forecast for the next twelve (12) months, including the Charges, revenues, Costs, Supplier Profit and Supplier Profit Margin.

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PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**1 FINANCIAL TRANSPARENCY OBJECTIVES**

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

Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Cost Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of gain share and/or Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*) or Schedule 7.3 (*Value for Money*));
- (d) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Agreeing the impact of Contract Change

- (e) for both Parties to agree the quantitative impact of any Contract Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

2 OPEN BOOK DATA

- 2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:
- (a) maintain and retain the Open Book Data; and
 - (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

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3 VISIBILITY THROUGH FINANCIAL REPORTING

3.1 Without prejudice to the generality of Paragraph 2, the Supplier shall, if requested by the Authority, promptly provide to the Authority details of the elements used to make up any Charges, including:

- (a) the Supplier's total fixed price for the Services and/or Deliverables;
- (b) the margin included in that total fixed price;
- (c) a list of the agreed prices against each manpower grade in the Financial Model;
- (d) a list of the costs underpinning those prices for each manpower grade in the Financial Model, being the price less the margin;
- (e) a summary of the costs broken down against each Service and/or Deliverable;
- (f) details of any other manpower costs, not already included in these rates, for all activities to be undertaken;
- (g) explanation of any underlying assumptions regarding:
 - (i) overtime rates;
 - (ii) standard hours;
 - (iii) accommodation charges; and
 - (iv) discounts applied;
- (h) a resource estimating model to support the Charges and any Changes (if applicable);
- (i) a breakdown of manpower resources by the number and type of Supplier Personnel (including any Sub-contractors) required for each Deliverable and/or Service and free of any contingency. This should also apply to third party costs;
- (j) the total price of Deliverables broken down by volume, unit cost and margin;
- (k) any additional activities, costs and, risks that may impact the Authority and which are not already covered by the Charges;
- (l) an explanation of the type and value of risk associated with the provision of Services, including the amount of money attributable to each risk;
- (m) an explanation and supporting details of any financing costs applicable to the Agreement;
- (n) the actual Charges profile for each Service Period; and

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- (o) any additional information as the Authority reasonably requires.

4 ONEROUS CONTRACTS

- 4.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
 - (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 4.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
- 4.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-Contractors/ Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 4.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Contract Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

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PART B: ROLLING FINANCIAL STATEMENT

1 ROLLING FINANCIAL STATEMENT

- 1.1 The Supplier shall provide a revised copy of the Rolling Financial Statement within two (2) weeks after the end of each Quarter.
 - 1.2 Each Rolling Financial Statement shall:
 - (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Agreement;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges based on current prices.
 - 1.3 The Supplier shall ensure that the Rolling Financial Statement is accurate and not misleading and is a true and fair reflection of:
 - (a) the Charges invoiced and revenue earned and forecast to be invoiced/earned;
 - (b) the Costs incurred and forecast to be incurred; and
 - (c) the Supplier Profit and Supplier Profit Margin achieved and forecast to be achieved.
 - 1.4 Each Rolling Financial Statement prepared at the end of a Contract Year and/or at the end of the Term shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
 - (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom; and
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts.
 - 1.5 Without prejudice to any other right or remedy of the Authority, if an audit undertaken pursuant to Clause 12 identifies that there is an error in any Rolling Financial Statement, the Supplier shall promptly rectify the error.
- 2 NOTIFICATION OF EVENTS AFFECTING THE COSTS OR FORECAST CHARGES**
- 2.1 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

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- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 2.1 shall not have the effect of amending any provisions of this Agreement.

3 DISCUSSION OF ROLLING FINANCIAL STATEMENT OR OPEN BOOK DATA

- 3.1 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any copy of the Rolling Financial Statement and/or Open Book Data.
- 3.2 Notwithstanding Paragraph 3.1, following the delivery by the Supplier of each Rolling Financial Statement:
 - (a) the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Rolling Financial Statement and the immediately preceding Rolling Financial Statement (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority.

4 KEY SUB-CONTRACTORS

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Rolling Financial Statement in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to the Audit Rights, the Supplier shall:
 - (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

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ANNEX 1: FORM OF ROLLING FINANCIAL STATEMENT

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SCHEDULE 8.1

GOVERNANCE

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Governance**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

“Contract Management Representatives” in respect of a Review Meeting, those contract management team representatives of either Party whose attendance is reasonably required to achieve the aims and objectives of the meeting, and any other persons considered by the Authority to be necessary for the review; and

“Review Meeting” a review meeting to consider the progress of the Agreement, discuss the Management Information and to review any operational issues that have arisen in the preceding review meetings.

2 MANAGEMENT OF THE SERVICES

- 2.1 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.

Meetings

- 2.2 Each Party shall ensure that its Contract Management Representatives shall make all reasonable efforts to attend Review Meetings at which that Contract Management Representative is required. If any Contract Management Representative is not able to attend a Review Meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate attends the relevant Review Meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- (b) that he/she is debriefed by such delegate after the Review Meeting.

- 2.3 Review meetings shall be quorate as long as at least two representatives from each Party are present.

- 2.4 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.

3 CONTRACT MANAGEMENT MECHANISMS

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

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- 3.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
- (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

4 REVIEWS

- 4.1 The Parties shall attend Review Meetings at the following frequency:

Contract Review	Annual
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The Parties shall agree the format of the Review Meetings (for example, face to face or telephone conference) in advance.

- 4.2 The Supplier shall provide the Authority with the most up to date Management Information relating to the previous two quarters at least 5 Working Days before each Review Meeting.

Annual Review

- 4.3 The Parties shall hold an annual Review Meeting on a date to be agreed between the Parties or, in the absence of such agreement, within Thirty (30) Working Days of the anniversary of the Operational Service Date. The annual Review Meeting will be attended by the Authority's Senior Responsible Owner and the Contract Management Representatives.
- 4.4 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:
- (a) the Supplier's performance in respect of the KPIs (including any relevant KPIs trends analysis and whether the KPIs reflect improvements in the Services over the Term and any efficiency gains made by the Supplier);
 - (b) any changes which may need to be made to the Services; and
 - (c) future requirements in relation to the Services.
- 4.5 The Authority shall prepare a report of its findings from the annual Review Meeting and discuss with the Supplier how any proposed changes to the Agreement and/or to the Services shall be addressed. Any Contract Changes to be implemented in accordance with this Paragraph 4.5 shall be implemented in accordance with the Change Control Procedure.

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SCHEDULE 8.3

CHANGE CONTROL PROCEDURE

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Change Control Procedure

1 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 as identified in Schedule 9.2 (<i>Key Personnel</i>) or otherwise notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance

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with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) 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;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) 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
- (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires testing and/or a programme for mobilisation, 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.

2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) 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
- (b) 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.

2.6 The Supplier shall:

- (a) 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
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

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- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - (b) 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:
 - (i) such costs are below £TBA ;
 - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*) and Paragraph 10 (*Changes to Charges*) below. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.
- 4 CHANGE REQUEST**
- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

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

- (a) the nature of the request for clarification; and
- (b) the reasonable justification for the request;

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

5 IMPACT ASSESSMENT

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

- (a) details of the proposed Contract Change including the reason for the Contract Change;
- (b) 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;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the KPIs and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Mobilisation Plan or Project Plan and any other timetable previously agreed by the Parties; and/or
 - (iv) 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;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) 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;
- (f) a timetable for the mobilisation, together with any proposals for the testing of the Contract Change;

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- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Schedule 2.8 (*Data Processing and List of Sub-processors*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 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.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and 5.1(e) shall:
 - (a) be based on the Models;
 - (b) be in accordance with Paragraph 10 (*Changes to Charges*) below;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Contract Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Contract Change.
- 5.6 The Authority may request that any Impact Assessment presents Charges without indexation for the purposes of comparison.
- 6 AUTHORITY'S RIGHT OF APPROVAL**
- 6.1 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:

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- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. 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
 - (c) 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.
- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 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.
- 6.3 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.

7 SUPPLIER'S RIGHT OF REJECTION

- 7.1 Following an Impact Assessment, if:
- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
 - (b) 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

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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.

8 FAST-TRACK CHANGES

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

8.2 If:

- (a) 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
- (b) 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 50% of the contract Value 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.

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

9 OPERATIONAL CHANGE PROCEDURE

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

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

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

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- 9.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the timescale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 CHANGES TO CHARGES

- 10.1 Any change to the Charges shall be developed and agreed by the Parties on the basis that:
- (a) such changes to the Charges shall be calculated in accordance with the underlying principles in the Cost Model which make up the Charges prior to the Contract Change;
 - (b) notwithstanding any other provision of this Schedule, the Supplier Profit Margin on such Charges shall:
 - (a) be no greater than the Supplier Profit Margin applying to Charges using the same pricing mechanism as set out in the Models as at the Effective Date; and
 - (b) in no event exceed the Anticipated Contract Life Profit Margin plus 5%;
 - (c) as part of the Change Control Procedure, the Supplier shall promptly prepare a complete revised copy of each Model (or if agreed otherwise by the Parties, an updated copy of the extract of each Model that has changed) to:
 - (i) enable the Parties to evaluate the impact of the Contract Change, including sufficient information to allow the Authority to understand any Charges, Costs, anticipated Supplier Profit, anticipated Supplier Profit Margin and Anticipated Contract Life Profit Margin set out in the Model (as applicable); and/or
 - (ii) document any changes to the Charges agreed in accordance with the Change Control Procedure;
 - (d) the Supplier shall prepare each iteration of the Models in accordance with Clause 10.28 (*The Models*) and, if such Part is used, Part D (*Cost Model*) of Schedule 7.1 (*Charges and Invoicing*).
 - (e) any amendment which is made in order to evaluate or reflect the impact of a Contract Change shall relate only to the impact of that Contract Change; and

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- (f) no amendment to the Charges shall affect, in any way whatsoever, the performance of the Services, except where expressly agreed in accordance with the Change Control Procedure.

10.2 The version of the Models agreed by the Authority in accordance with the Change Control Procedure shall become the current approved version of the Models for the purposes of this Agreement with effect from the date of signature of the Change Authorisation Notice.

10.3 If there is a Dispute regarding the correct version of any Model, the Authority's copy of the relevant Model shall be authoritative.

11 CHANGES TO CHARGES FOR ANY EXTENSION PERIOD

11.1 The Parties may agree to vary the Charges, in accordance with the Change Control Procedure, with effect from the commencement of any Extension Period. In the absence of any such agreement, the relevant Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

12 INDEXATION

12.1 For the avoidance of doubt, except as may be expressly permitted by Schedule 7.1 (Charges and Invoicing), the Supplier may not vary Charges to take account of Indexation at any time.

13 COMMUNICATIONS

13.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

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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:		

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ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
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:_____

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SCHEDULE 8.4

DISPUTE RESOLUTION PROCEDURE

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Dispute Resolution Procedure

1 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;
“Dispute Representative”	a person identified as escalation level 1, 2 or 3 in Paragraph 5 (<i>Contract Management Roles and Dispute Escalation Levels</i>) of Schedule 8.1 (<i>Governance</i>). “Level 1 Dispute Representative” shall be interpreted as any such person identified as escalation level 1 and “Level 2 Dispute Representative” and “Level 3 Dispute Representative” shall be interpreted accordingly.
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“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: <ul style="list-style-type: none"> (a) another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or (b) 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

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grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Level 1 Dispute Representatives shall attempt in good faith to resolve the Dispute; and
- (b) 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.

2.2 A Dispute Notice shall set out:

- (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Related Third Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Related Third Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Related Third Party Dispute Initiation Notice; and
- (b) 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.

2.4 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:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5) and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 47 (*Governing Law and Jurisdiction*)).

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- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this 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 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 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.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.1, ten (10) Working Days;
 - (b) in Paragraph 5.2, ten (10) Working Days; in Paragraph 6.2, five (5) Working Days; and
 - (c) in Paragraph 7.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

4 COMMERCIAL NEGOTIATION

- 4.1 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 Level 2 Dispute Representatives for consideration and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Level 2 Dispute Representatives, then the Authority may, at its sole discretion, escalate any Dispute to the Level 3 Dispute Representatives for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Level 3 Dispute Representatives then the provision of paragraph 4.2 shall apply.
- 4.2 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

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proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

5 MEDIATION

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

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a 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 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- (a) 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);
 - (b) 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
 - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a)) or 6.2(b), on the instructions of the president (or

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equivalent) of:

- (i) an appropriate body agreed between the Parties; or
- (ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) 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 Paragraphs 7 and 8;
- (c) 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;
- (d) 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;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 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 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Authority serves a Counter Notice, then:

- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the

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provisions of Paragraph 7.5 shall apply; or

- (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

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

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to Paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

- (a) 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
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to

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mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the **“Related Third Party Dispute Resolution Procedure”**).
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a 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”**.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination in accordance with paragraph 6 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.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
- (a) a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or
 - (b) 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 8.
- 9.5 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.
- 9.6 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:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Related Third Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third

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Parties whom the Authority considers necessary,

(together “**Related Third Party Dispute Representatives**”).

9.7 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:

- (a) 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;
- (b) 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
- (c) 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.

9.8 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:

- (a) either Party may serve a Mediation Notice in respect of the Related Third Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Related Third Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 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.

9.9 If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 7 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

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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.

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SCHEDULE 8.5

EXIT MANAGEMENT (TRANSITION)

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Exit Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Assistance Commencement Date"	has the meaning set out in Paragraph 6.1(a)
"Ethical Wall Agreement"	means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services to the Authority;
"Exit Information"	has the meaning given in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 2.4 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 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 (which the Supplier shall ensure is in accordance with Good Industry Practice);
"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

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	Sub-contractor for other purposes of material value;
"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 2.2(a) and 2.2(b);
"Services Transfer Date"	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;
"Termination Assistance Notice"	has the meaning given in Paragraph 6.1;
"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 by the Parties from time to time;
"Transferring Assets"	has the meaning given in Paragraph 8.2(a);
"Transferring Contracts"	has the meaning given in Paragraph 8.2(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);

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 2.1 The Supplier shall within 30 days from the Effective Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 The Supplier shall, within three (3) months following the Effective Date and during the Term:

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- (a) create and maintain a register of all Assets including their description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Services; and
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services,

(the “Registers”)

- 2.3 The Supplier shall 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.
- 2.4 Each Party shall appoint an Exit Manager within three (3) months of the Effective Date. The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point(s) 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 (including access to it) 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 and/or to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier:

- (a) details of the Service(s);
- (b) 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;
- (c) an inventory of Authority Data in the Supplier's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees 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 as defined in Schedule 9.1 (*Staff Transfer*); and

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(g) such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) 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.
- 3.3 The Supplier shall provide updates of the Exit Information on an as-requested basis as soon as reasonably practicable (and in any event within 10 Working Days of a request in writing from the Authority) and 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 in relation to any such changes.
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Supplier.
- 3.5 No later than two (2) months prior to the Services Transfer Date, the Supplier shall 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.

4 EXIT PLAN

- 4.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority a draft Exit Plan in a format agreed by the Authority which:
- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement;
 - (b) complies with the requirements set out in Paragraph 4.3;
 - (c) is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;

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- (b) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- (c) the management structure to be employed during the Termination Assistance Period;
- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Replacement Supplier(s) and/or the Authority;
- (f) details of any contracts which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- (g) the scope of Termination Assistance that may be required for the benefit of the Authority (including which services set out in Annex 1 are applicable);
- (h) how the Termination Services would be provided (if required) during the Termination Assistance Period, together with a timetable, any critical issues, any charges applicable in accordance with this Agreement and a capped estimate of such charges, in each case for those Termination Services;
- (i) proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the Services Transfer Date;
- (j) proposals for providing the Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;
- (k) proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Services;
- (l) proposals for the identification and return of all Authority Assets in the possession of and/or control of the Supplier or any third party;
- (m) proposals for the disposal of any redundant Deliverables and materials;
- (n) how the Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period;
- (o) any other information or assistance reasonably required by the Authority or a Replacement Supplier;
- (p) procedures to:
 - (i) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);

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- (ii) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
- (q) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees.

4.4 The Supplier shall:

- (a) maintain and update the Exit Plan no less frequently than:
 - (i) once every six (6) months;
 - (ii) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan; and
 - (iii) as soon as reasonably possible following a Termination Assistance Notice or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), and in any event no later than twenty (20) Working Days after the date of the Termination Assistance Notice, to prepare a final form that could be implemented immediately;
 - (iv) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services,

and shall submit each updated Exit Plan for the Authority's agreement in accordance with paragraph 4.2 above; and

- (b) jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.

4.5 Only if (by notification to the Supplier in writing) the Authority agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2, shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

4.7 In the event that Termination Assistance is required by the Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4.2, the Supplier shall provide the Termination Services in good faith and in accordance with the principles in this Schedule and the last Authority approved version of the Exit Plan (insofar as it still applies).

5 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

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

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

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**):
- (a) at least 4 months prior to the date of Partial Termination, 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; or
 - (b) 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).

The Termination Assistance Notice shall specify:

- (a) the date from which the Supplier shall commence providing the Termination Services (**"Assistance Commencement Date"**);
 - (b) the nature of the Termination Services required; and
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 12 months after the date that the Supplier ceases to provide the Services.
- 6.2 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 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

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and otherwise perform its obligations under this Agreement and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;

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- (b) provide to the Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Authority or the Replacement Supplier including assistance and/or access to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority; and
 - (d) subject to Paragraph 6.5, provide the Services and the Termination Services at no detriment to the KPI's, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Agreement;
 - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority; and
 - (f) seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of any Assets is required.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular KPI's, the Parties shall vary the relevant KPI(s) and/or any applicable Service Credits to take account of such adverse effect.

7 TERMINATION OBLIGATIONS

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Authority Data;
 - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);

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- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate any Authority Premises;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 7.4 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.

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8 ASSETS, SUB-CONTRACTS AND SOFTWARE

8.1 Following notice of Partial Termination or termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

- (a) 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;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

8.2 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:

- (a) which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
- (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferring Assets; and
 - (ii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- (c) 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 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 Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges or any Termination Payment.

8.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for them.

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- 8.5 Where the Supplier is notified in accordance with Paragraph 8.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferring Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 8.6 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).
- 8.7 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Authority and/or the Replacement Supplier. 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.
- 8.8 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) 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.
- 8.9 The Supplier shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has taken place.
- 8.10 The Supplier shall transfer 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**");

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- (a) 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
 - (b) 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.
- 8.11 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 8.7 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.
- 9 SUPPLIER PERSONNEL**
 - 9.1 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*) shall apply.
 - 9.2 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.
 - 9.3 During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:
 - (a) 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;
 - (b) 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;
 - (c) 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.

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- 9.4 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.

10 CHARGES

- 10.1 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
- (a) where more than 6 months' notice is provided, the same rate as set out in Paragraph 5 of Schedule 7.1 (*Charges and Invoicing*) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in Paragraph 5 of Schedule 7.1 (*Charges and Invoicing*) shall be payable.
- 10.2 If no rates are set out in Paragraph 5 of Schedule 7.1 (*Charges and Invoicing*), the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 10.3 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.

11 APPORTIONMENTS

- 11.1 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:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

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- 11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 11.1 as soon as reasonably practicable.

12 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.

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ANNEX 1: SCOPE OF TERMINATION ASSISTANCE

1 Scope of Termination Assistance

1.1 The Authority may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:

- (a) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (b) 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;
- (c) providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;
- (d) 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;
- (e) 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 provision of the Services after the Termination Assistance Period;
- (f) agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
- (g) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (h) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (i) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (j) 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;

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- (k) 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 provision of the Services to the Authority and/or the Replacement Supplier:
 - (i) 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
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the provision 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;
- (l) knowledge transfer services, including:
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) providing the Authority and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Sub-contractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
 - (v) 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).

1.2 The Supplier shall:

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- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(l) for agreement by the Authority at the time of termination or expiry of this Agreement; and
 - (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(g), providing skills and expertise of a suitable standard.
- 1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Authority and/or the Replacement Supplier.
- 1.4 The information which the Supplier will provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(l) shall include:
 - (a) copies of up-to-date procedures and operations manuals;
 - (b) product information;
 - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier; and
 - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule,and such information shall be updated by the Supplier at the end of the Termination Assistance Period.
- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
 - (a) any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
 - (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

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SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

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PART 1: SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <p>(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and</p> <p>(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;</p>
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
“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);
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“CRP Information”	the Corporate Resolution Planning Information;
“Corporate Change Event”	<p>means:</p> <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p>

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

**“Corporate
Resolution Planning
Information”**

means, together, the:

- (a) Group Structure Information and Resolution Commentary; and

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UK Public Sector and CNI Contract Information;

“Critical National Infrastructure”

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

a) major detrimental impact on the availability, integrity or delivery of essential services - including those services whose integrity, if compromised, could result in significant loss of life or casualties - taking into account significant economic or social impacts; and/or

b) significant impact on national security, national defence, or the functioning of the UK;

“Department”

a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

(a) Government Department; or

(b) Non-Ministerial Department.

“Dependent Parent Undertaking”

means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;

“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 one month or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;

“Disaster Recovery Plan”

has the meaning given in Paragraph 2.2(a)(iii);

“Disaster Recovery Services”

the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;

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“Group Structure Information and Resolution Commentary”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Public Sector Dependent Supplier”	means a supplier where that Supplier, or that Supplier’s Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of this Schedule 8.6;
“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;
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Review Report”	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
“Service Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm’s length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities,

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health bodies, police, fire and rescue, education bodies and devolved administrations;

“UK Public Sector / CNI Contract Information” means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of this Schedule 8.6;

“Valid” in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to this Schedule 8.6.

2 SERVICE CONTINUITY PLAN

2.1 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:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) ensure the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Recovery Plan”**);
 - (iii) Part C which shall relate to disaster capability (the **“Disaster Recovery Plan”**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.

2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than twenty (20) Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

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2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 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 Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A - GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity and disaster capability elements of the Service Continuity Plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity plan and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) 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;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

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- (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
- (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
- (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Subcontractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster, service failure, an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) it details a process for the management of disaster capability testing.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the KPIs 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.

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4 SERVICE CONTINUITY PLAN - PART B - BUSINESS CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
- (a) 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
 - (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- (a) address the various possible levels of failures of or disruptions to the Services;
 - (b) 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**”);
 - (c) specify any applicable quality standards and/or KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C - DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

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5.3 The Disaster Recovery Plan shall include an approach to business continuity and disaster recover that addresses the following:

- (a) loss of access to the Authority Premises;
- (b) loss of utilities to the Authority Premises;
- (c) loss of the Supplier's helpdesk system;
- (d) loss of a Sub-contractor;
- (e) emergency notification and escalation process;
- (f) contact lists;
- (g) staff training and awareness;
- (h) Service Continuity Plan testing;
- (i) post implementation review process;
- (j) any applicable KPIs with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Disaster Capability Plan;
- (k) 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;
- (l) access controls to any disaster capability sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (m) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D - INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

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- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six (6) months;
- (b) within three (3) calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) and 7.1(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.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall

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also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a “**Review Report**”) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) 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.

7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be

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at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

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- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan (including any linked elements in other parts of the Service Continuity Plan) and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

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PART 2: CORPORATE RESOLUTION PLANNING

10 SERVICE STATUS AND SUPPLIER STATUS

- 10.1 This Agreement is **not** a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 PROVISION OF CORPORATE RESOLUTION PLANNING INFORMATION

- 11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part 2:
- (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph (a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2:
- (a) is full, comprehensive, accurate and up to date;
 - (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Information
- and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

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- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
 - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
 - (e) complies with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.
- 11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Authority shall procure that the Relevant Authority or Relevant Authorities shall discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that the Relevant Authority or Relevant Authorities approve the CRP Information or the Relevant Authority or Relevant Authorities reject the CR.
- 11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part 2 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 of this Part 2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

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- 11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:
- (a) the Assurance is within the validity period stated in the Assurance it (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date on of issue of the Assurance.
- 11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Authority or Relevant Authorities:
- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part 2) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)
 - (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
 - (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
 - (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (iii) updated CRP Information has been provided under any of Paragraphs 11.8(a), 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (iv) unless not required pursuant to Paragraph 11.10.l

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11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to 11.8(d) of this Part 2, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (i) Aa3 or better from Moody's;
- (ii) AA- or better from Standard and Poors;
- (iii) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.-

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

12 TERMINATION RIGHTS

12.1 The Authority shall be entitled to terminate this Agreement under Clause 34.1(b) (Termination by the Authority) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

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13 CONFIDENTIALITY AND USAGE OF CRP INFORMATION

- 13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part 2 and Clause 21.
- 13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- a) redacting only those parts of the information which are subject to such obligations of confidentiality; and
 - b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - i) summarising the information;
 - ii) grouping the information;
 - iii) anonymising the information; and
 - iv) presenting the information in general terms.
- 13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

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APPENDIX I

Group Structure Information and Resolution Commentary

1. The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II if the Supplier or another member of the Supplier Group is subject to an Insolvency Event;
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II and the dependencies between each.

APPENDIX II

UK Public Sector / CNI contract Information

1. The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Appendix II and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

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SCHEDULE 8.7

CONDUCT OF CLAIMS

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Conduct of Claims

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this 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**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this 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.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) 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
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

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- (b) 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
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) 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
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 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.

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SCHEDULE 9.2

KEY PERSONNEL

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Key Personnel

1 KEY PERSONNEL

- 1.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term.
- 1.2 Paragraph 2 of this Schedule lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 1.3 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.
- 1.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 1.5 The Supplier shall:
 - (a) 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);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and

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- (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 1.6 The Authority may require the Supplier to remove or procure that any Subcontractor shall remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

2 KEY ROLE

KEY ROLE	Name of Key Personnel	Responsibilities /Authorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
Commercial Manager	████████	Acting as Supplier Change Manager (as defined in Schedule 8.3 (Change Control Procedure))	Authorising the contract Signing the contract Requesting / agreeing any contract changes Reviewing end of contract	Contract Duration
Project Manager	████████	Responsible for the day to day management of the contract, meeting KPI's.	From Commencement to end of contract	Contract Duration
Contract Manager	████████	Responsible for managing the Supplier's obligations under Schedule 6.1 (<i>Mobilisation</i>) and responsible for the logistics to ensure Campden BRI has the capacity to deliver the contract as agreed	From Commencement to end of contract	Contract Duration

Schedule 12 (Clustering)

1. When you should use this Schedule

- 1.1 This Schedule is required where various Other Contracting Authorities want to join with the Buyer to efficiently contract collectively under a single Contract rather than as separate individual Buyers under separate Contracts.

2. Definitions

- 2.1 **"Cluster Members"** means a person named as such in the Annex A to this Schedule which shall be incorporated into the Services Description.

3. Cluster Members benefits under the Contract

- 3.1 The Buyer has entered into this Contract both for its own benefit and for the benefit the Cluster Members.
- 3.2 The Cluster Members who are to benefit under the Contract are identified Annex 1 to this Schedule which shall be included into Services Description.
- 3.3 Cluster Members shall have all of the rights granted to the Buyer under a Contract. Accordingly, where the context requires in order to assure the Cluster Members rights and benefits under a Contract, and unless the Buyer otherwise specifies, references to the Buyer in a Contract (including those references to a Party which are intended to relate to the Buyer) shall be deemed to include a reference to the Cluster Members.
- 3.4 Each of the Cluster Members will be a third party beneficiary for the purposes of the CRTPA and may enforce the relevant provisions of a Contract pursuant to CRTPA.
- 3.5 The Parties to a Contract may in accordance with its provisions vary, terminate or rescind that Contract or any part of it, without the consent of any Cluster Member.
- 3.6 The enforcement rights granted to Cluster Members under Paragraph 1.4 are subject to the following provisions:
 - 3.6.1 the Buyer may enforce any provision of a Contract on behalf of a Cluster Member;
 - 3.6.2 any claim from a Cluster Member under the CRTPA to enforce a Contract shall be brought by the Buyer if reasonably practicable for the Buyer and Cluster Member to do so; and
 - 3.6.3 the Supplier's limits and exclusions of liability in the Contract shall apply to any claim to enforce a Contract made by the Buyer on behalf of a Cluster Member and to any claim to enforce a Contract made by a Cluster Member acting on its own behalf.

- 3.7 Notwithstanding that Cluster Members shall each receive the same Services from the Supplier the following adjustments will apply in relation to how the Contract will operate in relation to the Buyer and Cluster Members:

Services will be provided by the Supplier to each Cluster Member and Buyer separately;

- 3.7.1 the Supplier's obligation in regards to reporting will be owed to each Cluster Member and Buyer separately;
- 3.7.2 the Buyer and Cluster Members shall be entitled to separate invoices in respect of the provision of Deliverables;
- 3.7.3 the separate invoices will correlate to the Deliverables provided to the respective Buyer and Cluster Members;
- 3.7.4 the Charges to be paid for the Deliverables shall be calculated on a per Cluster Member and Buyer basis and each Cluster Member and the Buyer shall be responsible for paying their respective Charges;
- 3.7.5 the Service Levels and corresponding Service Credits will be calculated in respect of each Cluster Member and Buyer, and they will be reported and deducted against Charges due by each respective Cluster Member and Buyer; and
- 3.7.6 such further adjustments as the Buyer and each Cluster Member may notify to the Supplier from time to time.

Annex A – Cluster Members

The Deliverables shall also be provided for the benefit of the following Cluster Members:

Name of Cluster Member	Services to be provided	Duration	Special Terms
Border Force (BF)	As per Schedule 2.1- Specification	Duration of the Contract	No
The Home Office (HO)	As per Schedule 2.1- Specification	Duration of the Contract	No
Department of International Trade (DIT)	As per Schedule 2.1- Specification	Duration of the Contract	No