

CONTRACT ORDER FORM

This Contract Order Form is issued in accordance with the provisions of the Apprenticeship Training Provider Dynamic Marketplace (DMP) Agreement for the provision of Level 6 Chartered Surveyor Training and Related Services Dated Monday 28TH February 2022.

The Supplier agrees to supply the Services specified below on and subject to the terms of this Contract.

For the avoidance of doubt this Contract consists of the terms set out in this Contract Order Form and the Contract Terms

Order Number	CCDE20A02
From	<u>CABINET OFFICE ("Customer")</u>
To	University College of Estate Management ("Supplier")
Address	redacted

1. CONTRACT PERIOD

1.1	Commencement Date	
1.1	Commencement Date	Monday 28 th February 2022
1.2	Expiry Date (Apprenticeship programme completion date / End Point Assessment completion date)	Initial expiry date will be Monday 27 th February 2023
1.3	Extension	An option to extend for a further period of 12 months to Tuesday 27 th February 2024 subject to approval.

2. SERVICES REQUIRED

2.1	<p>Services Required. Apprenticeship training provider services / end point assessor services / both.</p> <p>Location</p> <p>number of students</p> <p>apprenticeship type and specific applicable institute for apprenticeships standard</p>	<p>The Cabinet office level 6 chartered surveyor apprenticeship programme training and related services</p> <p>The training is expected to be delivered online and not class based.</p> <p>The number of apprentices to be enrolled onto the programme is 9</p> <p>The scope will include the Apprenticeship Standard listed Level 6 Chartered Surveyor - ST0331</p> <ol style="list-style-type: none"> 1. ST0331 - Level 6 Chartered Surveyor (RICS) accredited Post Graduate Diploma will have 8 apprentices joining the programme 2. MSc ST0331 - Level 6 Chartered Surveyor (RICS) accredited BSc/BSc(Honours) will have 1 apprentice joining the programme
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	additional services	Additional Services may be requested throughout the lifetime of this contract.
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3. CONTRACT PERFORMANCE

	Required Apprenticeship Standard	Level 6 Chartered Surveyor - ST0331
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3.2	Quality Standards	Continued adherence to the relevant Institute for Apprenticeships industry standard. (www.instituteforapprenticeships.org/) Maintained ESFA registration and accreditation. General industry good practice
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4. PAYMENT

4.1	Contract Charges	In Schedule 3 Annex 1 of the Call Off Terms
4.2	Payment terms/Profile	Payment to be made in accordance with the current in force ESFA funding rules. Further additional terms in Annex 2 of this terms and conditions.
4.3	Customer billing address	To be provided to the supplier by office of government property, the cabinet office directly

5. LIABILITY AND INSURANCE

5.1	Suppliers limitation of Liability	In Clause 25 of this terms and conditions.
5.2	Insurance	Clause 26 of the Contract Terms: Professional Indemnity Insurance cover of £1 million any one claim. Public Liability Insurance cover of £1 million any one claim. Employers Liability insurance cover of £5 million any one claim.
5.3	Key Sub-Contractors	Clause 18 of the Contract Terms: The supplier has appointed the following as it Key Sub-Contractors:

FORMATION OF CONTRACT

By signing and completing this Contract Order Form the Supplier and the Customer agree to enter into a binding contract governed by the terms of this Contract Order Form and the attached terms and conditions.

For and on behalf of the Supplier:

Signature	Redacted
Name and Title	Redacted
Date	21/02/2022

For and on behalf of the Customer:

Signature	Redacted
Name and Title	Redacted
Date	22/02/2022

Crown Commercial Service

Call off Contract Terms for Apprenticeships Training Dynamic Marketplace (RM6102)

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A. BACKGROUND

1. The Supplier is a participant on the Dynamic Marketplace Apprenticeship Training system DMP pursuant to the DMP Agreement.
2. The Customer has, through the DMP, selected the Supplier to provide goods and/or services required as detailed in the Contract Order Form.
3. The Supplier will be paid for their provision of services and/or goods via a drawdown from the Customer's ESFA apprenticeship levy funding wallet (or similar) and, for items which sit outside ESFA funding, by additional direct payment.
4. In addition to providing funding, the ESFA is the body responsible for monitoring and regulating Apprenticeship Training Provider and End Point Assessor services. The ESFA issues rules and guidance for the use and drawdown of funding, which will change from time to time. Both the Supplier and the Customer intend to follow those ESFA rules and guidance in force from time to time as much as reasonably practicable.
4. Both the Customer and the Supplier have agreed that these terms and conditions, together with the Contract Order Form, will govern their relationship.

B. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Contract Schedule 1 (Definitions) or the relevant Contract Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Contract Schedule, it shall have the meaning given to it in the DMP Agreement. If no meaning is given to it in the DMP Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, 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 Crown Body;
 - d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 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**";
 - 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) references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;

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- h) references to “**Clauses**” and “**Contract Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Contract Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Contract Schedule in which these references appear; and
 - i) the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.4 In the event of and only to the extent of any conflict between the Contract Order Form, the Contract Terms and the provisions of the DMP Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- a) The DMP Agreement;
 - b) the Contract Order Form; and
 - c) the Contract Terms.
- 1.5 Any permitted changes by the Customer to the Template Contract Terms and the Template Contract Order Form under Clause 5 (Call for Competition Procedure) of the DMP Agreement and DMP Schedule 5 (Call for Competition Procedure) prior to them becoming the Contract Terms and the Contract Order Form which comprise this Contract shall prevail over the DMP Agreement.

2. ESFA RULES AND GOVERNANCE

- 2.1 The Parties agree that, as far as reasonably practicable, they will both accommodate and adhere to the relevant ESFA (or any successor body) rules which may apply from time to time.
- 2.2 In the event that any term or condition within this Contract contradicts an ESFA rule, the Customer will not require the Supplier to do anything that may jeopardise the Supplier’s ESFA accreditation and registration.
- 2.3 Should any material contradiction between this contract and ESFA rules be identified, the Parties agree to work together in good faith to resolve that contradiction.

3. DUE DILIGENCE

- 3.1 The Supplier acknowledges that:
- a) the Customer 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 Contract;
 - b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - c) it has raised all relevant due diligence questions with the Customer before the Contract Commencement Date;
 - d) it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone; and
 - e) it shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misinterpretation of the requirements of the Customer in the Contract Order Form or elsewhere in this Contract;

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- (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 Each Party represents and warrants that:
 - a) it has full capacity and authority to enter into and to perform this Contract;
 - b) this Contract is executed by its duly authorised representative;
 - c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
 - d) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

- 4.2 The Supplier represents and warrants that:
 - a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - b) it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals (including, but not limited to, being an authorised and registered ESFA approved provider at the Contract Commencement Date and throughout the Contract Period) to enter into this Contract;
 - c) its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - d) as at the Contract Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
 - e) if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Contract Commencement Date it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - f) it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Suppliers obligations under this Contract including the receipt of the Goods and/or Services by the Customer;
 - g) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other

malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;

- h) 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 Contract;
- i) it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Suppliers assets or revenue; and
- j) for the Contract Period and for a period of twelve (12) Months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.

- 4.3 Each of the representations and warranties set out in Clauses 4.1 and 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 4.1 and 4.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of a breach of that provision by the Supplier which constitutes a material Default.

C. DURATION OF CONTRACT

5. CONTRACT PERIOD

- 5.1 This Contract shall take effect on the Contract Commencement Date and the term of this Contract shall be the Contract Period.

D. CONTRACT PERFORMANCE

6. IMPLEMENTATION

- 6.1 The Supplier shall provide to the Customer the Goods and/or Services as identified in Annex 1 and/or 2 of Contract Schedule 2 to this Contract and in the Contract Order Form.
- 6.2 When providing the Goods and/ or Services, as required by Clause 6.1, the Supplier shall comply with the SLA standards detailed in contract schedule Annex 3 of Contract Schedule 2.

7. GOODS AND/ OR SERVICES

Provision of the Goods and/or Services

- 7.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgement of the Supplier in the provision of the Goods and/or Services and the performance of its obligations under this Contract.
- 7.2 The Supplier shall ensure that the Goods and/or Services:
- a) comply in all respects with the description of the Goods and/or Services in Contract Schedule 2 (Goods and/or Services) or elsewhere in this Contract; and
 - b) are supplied in accordance with the provisions of this Contract.
- 7.3 The Supplier shall perform its obligations under this Contract in accordance with:
- a) All applicable Law;
 - b) Good Industry Practice;
 - c) the Quality Standards;
 - d) the Suppliers own established procedures and practices to the extent the same do not conflict with the requirements of Clause
- 7.4 The Supplier shall:
- a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and/or Services in accordance with this Contract;
 - b) obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and/or Services;
 - c) ensure that any Goods and/or Services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Goods and/or Services shall meet the requirements of the Customer;
 - d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
 - e) ensure that the Goods and/or Services are fully compatible with any Customer Property or Customer Assets or otherwise used by the Supplier in connection with this Contract;
 - f) minimise any disruption to the Sites and/or the Customer's operations when providing the Goods and/or Services;
 - g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - h) co-operate with any other suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any other supplier and, on the Contract Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor

in respect of Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;

- j) provide the Customer with such assistance as the Customer may reasonably require during the Contract Period in respect of the supply of the Goods and/or Services;
- k) deliver the Goods and/or Services in a proportionate and efficient manner; and
- l) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Suppliers compliance with its obligations under this Contract.

7.5 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.

8. SERVICES

General application

8.1 This Clause shall apply if any Services have been included in Annex 1 of Contract Schedule 2 (Goods and/or Services).

Time of Delivery of the Services

8.2 The Supplier shall provide the Services on the date(s) specified in the Contract Order Form (or elsewhere in this Contract).

Location and Manner of Delivery of the Services

8.3 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.

8.4 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

Undelivered Services

8.5 In the event that any of the Services are not delivered in accordance with Clauses 7 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 and 8.4 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of any applicable Contract Charges which sit outside the applicable ESFA funding band for the Services that were not so delivered until such time as the undelivered services are delivered.

8.6 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 and 8.4 (Location and Manner of Delivery of the Services) to be a material Default.

Obligation to Remedy of Default in the Supply of the Services

8.7 Subject to Clauses 22.10 and 22.21 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under

Clauses 8.6 (Undelivered Services) and 27(Customer Remedies for Default)), the Supplier shall, where practicable:

- a) remedy any breach of its obligations in Clauses 8 and 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred);
- b) meet all the costs of, and incidental to, the performance of such remedial work

Continuing Obligation to Provide the Services

- 8.8 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
- a) any withholding or deduction by the Customer and/or ESFA of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Contract;
 - b) the existence of an unresolved Dispute; and/or
 - c) any failure by the Customer to pay any Contract Charges, unless the Supplier is entitled to terminate this Contract under Clauses 31.1 to 31.4 31.3 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Contract Charges.

9. QUALITY STANDARDS

- 9.1 The Supplier shall at all times during the Contract Period comply with the Quality Standards and maintain, where applicable, accreditation with the relevant Quality Standards' authorisation body.
- 9.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent Quality Standards which could affect the Suppliers provision, or the receipt by the Customer, of the Goods and/or Services. A proposed adoption of any such new or emergent Quality standard, or changes to existing Quality Standards (including any specified in the Contract Order Form), shall be made by the Supplier by way of notice which the Supplier will consider before the supplier decides whether the Contract should be varied and how that contract variation should be documented.
- 9.3 Where a new or emergent Quality Standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Suppliers provision, or the Customer's receipt of the Goods and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Quality Standard.
- 9.4 Where Quality Standards referenced conflict with each other or with best professional or industry practice adopted after the Contract Commencement Date, then the later Quality Standard or best practice shall be adopted by the Supplier. Any such alteration to any Quality Standard or Quality Standards shall require Approval (and the written consent of the Customer where the relevant Standard or Standards is/are included in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 9.5 Where a Quality Standard, policy or document is referred to 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 Customer and the Parties shall agree the impact of such change.

10. DISRUPTION

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Suppliers ability at any time to perform its obligations under this Contract.
- 10.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Contract.
- 10.4 If the Suppliers proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Contract for material Default.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 11.1 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer.

11. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 11.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 31.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
- a) notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
 - i the Customer Cause and its effect, or likely effect, on the Supplier ability to meet its obligations under this Contract; and
 - ii any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - iii use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any delay or anticipated delay.

E. CONTRACT GOVERNANCE**12. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 12.1 The Supplier shall keep and maintain for seven (7) years after the Contract Expiry Date (or as long a period as may be agreed between the Parties or required by the in force ESFA rules), full and accurate records and accounts of the operation of this Contract including the Goods and/or Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 12.2 The Supplier shall:
- a) keep the records and accounts referred to in Clause 12.1 in accordance with Good Industry Practice and Law; and

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- b) afford any Auditor access to the records and accounts referred to in Clause 12.1 at the Suppliers premises and/or provide records and accounts (including copies of the Suppliers published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 12.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Suppliers obligations under this Contract including in order to:
- (a) verify the accuracy of the Contract Charges and any other amounts payable by the Customer under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;
 - (c) verify the Open Book Data;
 - (d) verify the Suppliers and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Sub-Contractors or their ability to perform the Goods and/or Services;
 - (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
 - (j) 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 Customer has used its resources;
 - (k) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (l) review the Suppliers quality management systems (including any quality manuals and procedures);
 - (m) review the Suppliers compliance with the Standards;
 - (n) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or

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- (o) review the integrity, confidentiality and security of the Customer Data.
- 12.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 12.4 Subject to the Suppliers rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- a) all reasonable information requested by the Customer within the scope of the audit;
 - b) reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and
 - c) access to the Supplier Personnel.
- 12.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 12, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

13. CHANGE

Legislative Change

- 13.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:
- a) General Change in Law;
 - b) Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Contract Commencement Date.
- 13.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 13.1b), the Supplier shall:
- a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether, in their opinion a contract variation is required to the provision of the Goods and/or Services, the Contract Charges or this Contract ; and
 - (ii) whether any relief from compliance with the Suppliers obligations is required; and
 - b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Contract Charges.

Variation Process

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- 13.3 Subject to the provisions of this Clause 13.3 and Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**"
- 13.4 A Party may request a Variation by completing, signing and sending the **Variation Form** to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 13.5 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

F. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

14. CONTRACT CHARGES AND PAYMENT

Contract Charges

- 14.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Contract Schedule 3 (Contract Charges, Payment and Invoicing).
- 14.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under, 12(Records, Audit Access and Open Book Data), 23.23 to 23.24 (Freedom of Information) and 23.25 to 23.39 (Protection of Personal Data).
- 14.3 If the Customer fails to pay undisputed Contract Charges, which are in excess of and covered by ESFA funding, properly invoiced under this Contract, 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 judgement.
- 14.4 The Customer is not responsible for any shortfall in fees or any lost revenue suffered by the Supplier, in the event that an apprentice student leaves their apprenticeship course early and uncompleted. In such an event, ESFA funding will cease as soon as possible and any obligation owed by the Customer to pay additional fees directly will end.

VAT

- 14.5 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 14.6 Where VAT is applicable, the Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Suppliers failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract
- 14.7 Any amounts due under Clauses 14.5 and 14.6 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

Retention and Set Off

- 14.8 The Customer may retain or set off any amount, in excess of ESFA funding, owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Customer.

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- 14.9 If the Customer wishes to exercise its right pursuant to Clause 14.8 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Contract Charges.
- 14.10 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

Foreign Currency

- 14.11 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 14.12 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 14.11 by the Supplier.

Income Tax and National Insurance Contributions

- 14.13 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.
- 14.14 In the event that any one of the Supplier Personnel is a Worker as defined in Contract Schedule 1(Definitions) who receives consideration relating to the Goods and/or Services, then, in addition to its obligations under Clause 14.13, the Supplier shall ensure that its contract with the Worker contains the following requirements:
- a) that the Customer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 14.13, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
 - b) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 14.14a); and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 14.13 or confirms that the Worker is not complying with those requirements; and

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- (iii) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible

15. PROMOTING TAX COMPLIANCE

- 15.1 This Clause 15 shall apply if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds during the Contract Period.
- 15.2 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - b) promptly provide to the Customer:
 - (a) details of the steps that 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
 - (b) such other information in relation to the Occasion of Tax Noncompliance as the Customer may reasonably require.

In the event that the Supplier fails to comply with this Clause 15 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Contract for material Default.

G. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

16. SUPPLIER PERSONNEL

Supplier Personnel

- 16.1 The Supplier shall:
 - a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
 - b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
 - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
 - (iv) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Contract Schedule 4 (Security);

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- c) subject to Contract Schedule 5 (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 Customer;
 - 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 Contract 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 programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Contract Expiry Date.
- 16.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).
- 16.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

Relevant Convictions

- 16.4 For each member of Supplier Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
- a) carry out a check with the records held by the Department for Education (DfE);
 - b) conduct thorough questioning regarding any Relevant Convictions; and
 - c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS), and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods and/or Services any person who has a Relevant Conviction or an inappropriate record.

17. STAFF TRANSFER

- 17.1 This Clause shall not apply if there are Goods but no Services Under this Contract.
- 17.2 Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Contract Schedule 5 (Staff Transfer) shall apply as follows:
- a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Contract Schedule 5 (Staff Transfer) shall apply;
 - b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Contract Schedule 5 (Staff Transfer) shall apply;

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- c) where the Relevant Transfer involves the transfer of Customer Employees and Transferring Former Supplier Employees, Parts A and B of Contract Schedule 5 (Staff Transfer) shall apply; and
 - d) Part C of Contract Schedule 5 (Staff Transfer) shall not apply;
- 17.3 Where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Contract Schedule 5 (Staff Transfer) shall apply and Parts A and B of Contract Schedule 5 (Staff Transfer) shall not apply.
- 17.4 Part D of Contract Schedule 5 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.
- 17.5 The Supplier shall both during and after the Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

18. SUPPLY CHAIN RIGHTS AND PROTECTION

Appointment of Sub-Contractors

- 18.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - b) comply with its obligations under this Contract in the Delivery of the Goods and/or Services; and
 - c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 18.2 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify the Customer and provide the Customer with:
- a) the proposed Sub-Contractor's name, registered office and company registration number;
 - b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
 - c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 18.3 If requested by the Customer within ten (10) Working Days of receipt of the Suppliers notice issued pursuant to Clause 18.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Customer.
- 18.4 The Customer may, within ten (10) Working Days of receipt of the Suppliers notice issued pursuant to Clause 18.2 (or, if later, receipt of any further information requested pursuant to Clause 18.3), object to the appointment of the relevant Sub-Contractor if they consider that:
- a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Contract

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- b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - c) the proposed Sub-Contractor employs unfit persons, in which case, the Supplier shall not proceed with the proposed appointment.
- 18.5 The Supplier may proceed with the proposed appointment if
- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Suppliers notice issued pursuant to Clause18.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 18.3; and
 - (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 18.7 to 18.9 (Appointment of Key Sub-Contractors).
- 18.6 The Supplier expressly agrees that it shall not charge, or pass on charges in any way, for the management and supervision of any Sub-Contractor.

Appointment of Key Sub-Contractors

- 18.7 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in DMP Schedule 7 (Key Sub-Contractors).
- 18.8 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
 - b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or
 - c) the proposed Key Sub-Contractor employs unfit persons.
- 18.9 Except where the Authority and the Customer have given their prior written consent under Clause 18.7, the Supplier shall ensure that each Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 23.1 (Security Requirements), 23.2 to 23.9 (Protection of Customer Data) and 23.25 to 23.39 (Data Protection);

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- (ii) FOIA requirements set out in Clause 23.23 to 23.24 (Freedom of Information);
 - (iii) the keeping of records in respect of the Goods and/or Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
 - (iv) the conduct of audits set out in Clause 12 (Records, Audit Access & Open Book Data);
- i. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 30 (Customer Termination Rights), 32 (Termination by Either Party) and 34 (Consequences of Expiry or Termination) of this Contract;
 - ii. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
 - iii. a provision, where a provision in Contract Schedule 5 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

Supply Chain Protection

- 18.10 The Supplier shall ensure that all Sub-Contracts contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
 - (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
 - (d) conferring a right to the Customer to publish the Suppliers compliance with its obligation to pay undisputed invoices within the specified payment period.
- 18.11 The Supplier shall:
- a) pay undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
 - b) Provide a summary of its compliance with this Clause 18.11a), such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 18.12 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 18.13 Notwithstanding any provision of Clauses 23.10 to 23.18 (Confidentiality) and 24 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of

receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-Contracts

- 18.14 The Customer may require the Supplier to terminate:
- a) a Sub-Contract where:
 - i. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 30 (Customer Termination Rights) except Clause 30.9 (Termination Without Cause); and/or
 - ii. relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise;
 - b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer 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 Customer was given notice of the Change of Control.

Retention of Legal Obligations

- 18.15 Notwithstanding the Suppliers right to Sub-Contract pursuant to Clause 18 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

H. PROPERTY MATTERS

19. CUSTOMER PREMISES

Licence to occupy Customer Premises

- 19.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 19.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.
- 19.3 Save in relation to such actions identified by the Supplier in accordance with Clause 3 (Due Diligence) and set out in the Contract Order Form (or elsewhere in this Contract), should the Supplier require modifications to the Customer Premises, such

modifications shall be subject to Approval and shall be carried out by the Customer at the Suppliers expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 19.3 without undue delay. Ownership of such modifications shall rest with the Customer.

- 19.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein
- 19.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

Security of Customer Premises

- 19.6 The Customer shall be responsible for maintaining the security of the Customer Premises. The Supplier shall comply with any reasonable security requirements of the Customer while on the Customer Premises.
- 19.7 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

20. CUSTOMER PROPERTY

- 20.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 20.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 20.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 20.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 20.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Contract and for no other purpose without Approval.
- 20.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 20.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming

aware of any defects appearing in or losses or damage occurring to the Customer Property.

21. SUPPLIER EQUIPMENT

- 21.1 Unless otherwise stated in the Contract Order Form (or elsewhere in this Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and/or Services.
- 21.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 21.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Contract Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 21.4 All the Suppliers property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Suppliers property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 21.5 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods and/or Services in accordance with this Contract.
- 21.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 21.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- a) remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Contract; and
 - b) replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

I. INTELLECTUAL PROPERTY AND INFORMATION

22. INTELLECTUAL PROPERTY RIGHTS

Allocation of title to IPR

- 22.1 Save as expressly granted elsewhere under this Contract:
- a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) the Supplier Background IPR;
 - (ii) the Third Party IPR; and
 - (iii) the Project Specific IPR.
 - b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - i. Customer Background IPR; and
 - ii. Customer Data.

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- 22.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 22.1, 22.2 and 22.3, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 22.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Licence granted by the Supplier: Project Specific IPR

- 22.4 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, nonexclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

Licence granted by the Supplier: Supplier Background IPR

- 22.5 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 22.6 At any time during the Contract Period or following the Contract Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 22.5 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of 22.5 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 22.7 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 22.6, the Customer shall:
- a) immediately cease all use of the Supplier Background IPR;
 - b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
 - c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Background IPR.

Customer's right to sub-licence

- 22.8 The Customer shall be freely entitled to sub-licence the rights granted to it pursuant to Clause 22.4 (Licence granted by the Supplier: Project Specific IPR).
- 22.9 The Customer may sub-licence:
- (a) the rights granted under Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

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- (i) the sub-licence is on terms no broader than those granted to the Customer; and
 - (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

Customer's right to assign/novate licences

- 22.10 The Customer shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 22.4 (Licence granted by the Supplier: Project Specific IPR).
- 22.11 The Customer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to:
- a) a Central Government Body; or
 - b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- 22.12 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 22.5 (Licences granted by the Supplier: Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR).
- 22.13 If a licence granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clauses 22.10 and/or 22.11 or there is a change of the Customer's status pursuant to Clause 22.12 (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

Third Party IPR

- 22.14 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) and Clause 22.10 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 22.5 (Licences granted by the Supplier: Supplier Background IPR) and Clause 22.11 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:

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- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (b) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.

Licence granted by the Customer

- 22.15 The Customer hereby grants to the Supplier a royalty-free, nonexclusive, non-transferable licence during the Contract Period to use the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 23.10 to 23.18 (Confidentiality); and
 - b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

Termination of licenses

- 22.16 Subject to Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 22 (Intellectual Property Rights) (other than those granted pursuant to Clause 22.14 (Third Party IPR) and 22.15 (Licence granted by the Customer)) shall survive the Contract Expiry Date.
- 22.17 The Supplier shall, if requested by the Customer as a result of a contract termination in accordance with Clause 30, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 22.18 The licence granted pursuant to Clause 22.15 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 22.15 (Licence granted by the Customer) shall terminate automatically on the Contract Expiry Date and the Supplier shall:
- a) immediately cease all use of the Customer Background IPR and the Customer Data (as the case may be);
 - b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data (as the case may be); and
 - c) ensure, so far as reasonably practicable, that any Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR and/or Customer Data.

IPR Indemnity

- 22.19 The Supplier shall, during and after the Contract Period, on written demand, indemnify the Customer against all Losses incurred by, awarded against, or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 22.20 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

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- a) procure for the Customer the right to continue using the relevant item which is subject to the IPR 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 Goods and/or Services;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Goods and/or Services.
- 22.21 If the Supplier elects to procure a licence in accordance with Clause 22.20a) or to modify or replace an item pursuant to Clause 22.20b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Customer may terminate this Contract by written notice with immediate effect; and
 - (ii) without prejudice to the indemnity set out in Clause 22.19, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

23. SECURITY AND PROTECTION OF INFORMATION

Security Requirements

- 23.1 The Supplier shall comply with the requirements of Contract Schedule 4 (Security) including the Security Management Plan (if any).

Protection of Customer Data

- 23.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 23.3 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise Approved by the Customer.
- 23.4 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer in the Contract Order Form and, in any event, as specified by the Customer from time to time in writing.
- 23.5 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 23.6 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any business continuity plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 23.7 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any)

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- 23.8 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 23.9 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- a) require the Supplier (at the Suppliers expense) to restore or procure the restoration of Customer Data as required by the Customer, 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 Customer's notice; and/or
 - b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so as required by the Customer.

Confidentiality

- 23.10 For the purposes of Clauses 23.10 to 23.18, 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.
- 23.11 Except to the extent set out in Clauses 23.10 to 23.18 or where disclosure is expressly permitted elsewhere in this Contract, 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); and
 - b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract 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 Contract ; 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.
- 23.12 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 23.23 to 23.24 (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 Customer arising out of or in connection with this Contract ;
 - (ii) the examination and certification of the Customer'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 Customer is making use of any Goods and/or Services provided under this Contract ; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; 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.

- 23.13 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.
- 23.14 Subject to Clause 23.11, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Suppliers obligations under this Contract ; and
 - b) its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 23.15 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 23.14, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 23.16 The Customer may disclose the Confidential Information of the Supplier:
- a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - c) to the extent that the Customer (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 23.16d) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - e) on a confidential basis for the purpose of the exercise of its rights under this Contract ; or
 - f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer, 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 Customer under Clause 23.10 to 23.18.
- 23.17 Nothing in Clause 23.10 to 23.18 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract 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.
- 23.18 In the event that the Supplier fails to comply with Clauses 23.11 to 23.12, the Customer reserves the right to terminate this Contract for material Default.

Transparency

- 23.19 The Supplier recognises that the Customer is subject to PPN 01/17 (Updates to transparency principles v1.1 <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) The Supplier shall comply with the provisions of Contract Schedule 9 in order to assist the Customer with its compliance with its obligations under that PPN.

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- 23.20 Without prejudice to the Supplier's reporting requirements set out elsewhere, within three (3) Months of the Commencement Date the Supplier shall submit to the Customer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Contract Schedule 1
- 23.21 If the Customer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 23.22 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Contract Schedule 9.

Freedom of Information

- 23.23 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
 - b) transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 23.24 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer 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 Contract) the Customer 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/or the EIRs.

Data Protection

- 23.25 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor unless otherwise specified in Contract Schedule 7. The only processing that the Processor is authorised to do is listed in Contract Schedule 7 by the Controller and may not be determined by the Processor.
- 23.26 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

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- 23.27 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.28 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a) process that Personal Data only in accordance with Contract Schedule 7, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
 - c) ensure that :
 - i. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 7);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

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1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 2. the Data Subject has enforceable rights and effective legal remedies;
 3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 23.29 Subject to Clause 23.30, the Processor shall notify the Controller immediately if it:
- a) receives a Data Subject Request (or purported Data Subject Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 23.30 The Processor's obligation to notify under Clause 23.29 shall include the provision of further information to the Controller in phases, as details become available.
- 23.31 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.29 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a) the Controller with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Controller following any Data Loss Event;
 - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

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- 23.32 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the processing is not occasional;
 - b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.33 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 23.34 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 23.35 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- a) notify the Controller in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Controller;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in clauses 23.25 to 23.39 (Data Protection) such that they apply to the Sub-processor; and
 - d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 23.36 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 23.37 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 23.38 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.39 Where the Parties include two or more Joint Controllers as identified in Contract Schedule 7 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Contract Schedule 8 in replacement of Clauses 23.25 to 23.39 for the Personal Data under Joint Control.

24. PUBLICITY AND BRANDING

- 24.1 The Supplier shall not, without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed):
- a) make any press announcements or publicise this Contract in any way; or

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- b) use the Customer's name or brand in any promotion or marketing or announcement of orders,

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

J. LIABILITY AND INSURANCE

25. LIABILITY

Unlimited Liability

- 25.1 Neither Party excludes or limits its liability for:
- a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - b) bribery or Fraud by it or its employees;
 - c) 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
 - d) any liability to the extent it cannot be excluded or limited by Law.
- 25.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 22.19 to 22.21 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

Financial Limits

- 25.3 Subject to Clauses 25.1 to 25.2 (Unlimited Liability), the Suppliers total aggregate liability: in respect of all Losses incurred by the Customer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed: the higher of five million pounds (£5,000,000) or a sum equal to one hundred and fifty per cent (150%) of the Contract Charges.
- 25.4 Subject to Clauses 25.1 and 25.2 (Unlimited Liability) and 25.3 and 25.4 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:
- a) in relation to any Customer Causes occurring from the Contract Commencement Date to the end of the first Contract Year, a sum equal to Contract Charges;

Non-recoverable Losses

- 25.5 Subject to Clause 25.1 and 25.2 (Unlimited Liability) neither Party shall be liable to the other Party for any:
- a) indirect, special or consequential Loss;
 - b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

Recoverable Losses

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- 25.6 Subject to Clause 25.3 and 25.4 (Financial Limits), and notwithstanding Clause 25.5 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:
- a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - b) any wasted expenditure or charges;
 - c) the additional cost of procuring Replacement Goods and/or Services for the remainder of the Contract Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Contract;
 - d) any compensation or interest paid to a third party by the Customer; and
 - e) any fine, penalty or costs incurred by the Customer pursuant to Law.

Miscellaneous

- 25.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 25.8 Any Deductions shall not be taken into consideration when calculating the Suppliers liability under Clause 25.3 to 25.4 (Financial Limits).
- 25.9 Subject to any rights of the Customer under this Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Contract shall be dealt with in accordance with the provisions of DMP Schedule 20 (Conduct of Claims).

26. INSURANCE

- 26.1 This Clause 26 will only apply where specified in the Contract Order Form or elsewhere in this Contract.
- 26.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the DMP Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the DMP Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.
- 26.3 Without limitation to the generality of Clause 26.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Contract Order Form.
- 26.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 26 for six (6) years after the Contract Expiry Date.
- 26.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 26 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 26 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 26.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Contract. It shall be the responsibility of the Supplier to

determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.

- 26.8 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 Customer (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.

K. REMEDIES AND RELIEF

27. CUSTOMER REMEDIES FOR DEFAULT

Remedies

- 27.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
- a) at the Customer's option, give the Supplier the opportunity (at the Suppliers expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Customer's instructions;
 - b) carry out, at the Suppliers expense, any work necessary to make the provision of the Goods and/or Services comply with this Contract;
 - c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services;
 - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;
- 27.2 Where the Customer exercises any of its step-in rights under Clauses 27.1c)(ii) or 27.1c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party and provided that the

Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Goods and/or Services.

Rectification Plan Process

- 27.3 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 27.1c)(i):
- a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
 - b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 27.4 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Suppliers 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 Contract Schedule 6 (Dispute Resolution Procedure).
- 27.5 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- a) is insufficiently detailed to be capable of proper evaluation;
 - b) will take too long to complete;
 - c) will not prevent reoccurrence of the Default; and/or
 - d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 27.6 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer 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 Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 27.7 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

- 28.1 If the Supplier has failed to:

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- a) provide the Goods and/or Services in accordance with the Service Levels;
or
- b) comply with its obligations under this Contract,
- (each a “Supplier Non-Performance”), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 11 (Supplier Notification of Customer Cause)):
- i. the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- ii. the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.9 (Termination Without Cause);
- 28.2 Where the Supplier Non-Performance constitutes a Service Level Failure the following will apply:
- a) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Goods and/or Services affected by the Customer Cause, in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.
- 28.3 In order to claim any of the rights and/or relief referred to in Clauses 28.1 and 28.2, the Supplier shall:
- a) comply with its obligations under Clause 11 (Notification of Customer Cause); and
- b) within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:
- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect on the Suppliers ability to meet its obligations under this Contract; and
- (c) the relief claimed by the Supplier.
- 28.4 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Suppliers assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 28.5 Without prejudice to Clause 8.8 (Continuing obligation to provide the Services) if a Dispute arises as to:
- a) whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
- b) the nature and/or extent of the relief 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.

29. FORCE MAJEURE

- 29.1 Subject to the remainder of Clause 29, a Party may claim relief under Clause 29 from liability for failure to meet its obligations under this Contract 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 Contract 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.
- 29.2 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.
- 29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 29 to the extent that consequences of the relevant Force Majeure Event:
- i. are capable of being mitigated by any of the provision of any Goods and/or Services, but the Supplier has failed to do so; and/or
 - ii. should have been foreseen and prevented or avoided by a prudent provider of goods and/or services similar to the Goods and/or Services, operating to the standards required by this Contract.
- 29.4 Subject to Clause 29.5, 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 Goods and/or Services affected by the Force Majeure Event.
- 29.5 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.
- 29.6 Where, as a result of a Force Majeure Event, an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
- a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Goods and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 29.7 Where, as a result of a Force Majeure Event the Supplier fails to perform its obligations in accordance with this Contract:
- a) the Customer shall not be entitled: during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 27.1b) and 27.1c) (Customer Remedies for Default) as a result of such failure
 - b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

29.8 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 Contract.

29.9 Relief from liability for the Affected Party under Clause 29 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 Contract and shall not be dependent on the serving of notice under Clause 29.8.

L. TERMINATION AND EXIT MANAGEMENT

30. CUSTOMER TERMINATION RIGHTS

Termination on Material Default

30.1 The Customer may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- a) the representation and warranty given by the Supplier pursuant to Clause 4.2e) (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- b) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Contract Order Form) of the value of the Suppliers aggregate annual liability limit for that Contract Year as set out in Clauses 25.3 and 25.4 (Liability) ;
- c) the Customer expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 10.4 (Disruption), 12.5 (Records, Audit Access and Open Book Data), 15 (Promoting Tax Compliance), 23.18 (Confidentiality), 39.6b) (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Contract Schedule 5 (Staff Transfer) ;
- d) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- e) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process.
- f) the Supplier has been struck off the current and in force ESFA register.

30.2 For the purpose of Clause 30.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

Termination in Relation to Financial Standing

30.3 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- a) adversely impacts on the Suppliers ability to supply the Goods and/or Services under this Contract ; or
- b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Contract.

Termination on Insolvency

- 30.4 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 30.5 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 30.6 The Supplier shall ensure that any notification made pursuant to Clause 30.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 30.7 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:
- a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - b) where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control

Termination for breach of Regulations

- 30.8 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

Termination Without Cause

- 30.9 The Customer shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least ninety (90) Working Days written notice (unless stated differently in the Contract Order Form).

Termination in Relation to DMP Agreement

- 30.10 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier if the DMP Agreement is terminated for any reason whatsoever.

31. SUPPLIER TERMINATION RIGHTS

Termination on Customer Cause for Failure to Pay

- 31.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Contract if the Customer fails to pay an undisputed sum and/or directs ESFA not to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds an amount equal to one month's average Contract Charges (unless a different amount has been specified in the Contract Order Form), for the purposes of this Clause 31.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:
- a) the Customer's failure to pay; and
 - b) the correct overdue and undisputed sum; and

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- c) the reasons why the undisputed sum is due; and
 - d) the requirement on the Customer to remedy the failure to pay;

31.2 If a Termination Notice is issued in accordance with clause 31.1 this Contract will 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).

31.3 Termination rights under clause 31.1 shall not apply where the failure to pay is due to the Customer exercising its right(s) of retention and/or set off.

31.4 The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

32. TERMINATION BY EITHER PARTY

32.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Contract in accordance with Clause 29.6a) (Force Majeure).

33. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

33.1 Where the Customer has the right to terminate this Contract, the Customer shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Customer elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

33.2 Any suspension of this Contract under Clause 33.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

34. CONSEQUENCES OF EXPIRY OR TERMINATION

34.1 Consequences of termination under Clauses 30.1 and 30.2 (Termination on Material Default), 30.3 (Termination in Relation to Financial Standing), 30.10 (Termination in Relation to DMP Agreement)

34.2 Where the Customer:

a) terminates (in whole or in part) this Contract under any of Clauses 30.1, 30.2, 30.3 and 30.10; and

b) then makes other arrangements for the supply of the Goods and/or Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements

34.3 Consequences of termination under Clauses 30.9 (Termination without Cause) and 31.1(Termination on Customer Cause for Failure to Pay)

34.4 Where:

a) the Customer terminates (in whole or in part) this Contract under Clause 30.9 (Termination without Cause); or

b) the Supplier terminates this Contract pursuant to Clause 31.1 (Termination on Customer Cause for Failure to Pay),

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- the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract.
- 34.5 The Supplier shall take all reasonable steps to mitigate Losses identified in accordance with Clause 34.2.
- 34.6 The Supplier shall submit a fully itemised and costed list of such Losses identified in accordance with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier.
- 34.7 The Customer shall not be liable under Clause 34.3 to pay any sum which:
- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated.
- 34.8 Consequences of termination under Clause 32.1 (Termination for Continuing Force Majeure Event)
- (a) The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clause 32.1 (Termination for Continuing Force Majeure Event).
- 34.9 Consequences of Termination for any reason
- a) Save as otherwise expressly provided in this Contract:
 - b) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
 - c) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 12 (Records, Audit Access & Open Book Data), 22 (Intellectual Property Rights), 23.10 to 23.18 (Confidentiality), (Freedom of Information) 23.25 to 23.39 (Data Protection), 25 (Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights) 45 (Dispute Resolution) and 46 (Governing Law and Jurisdiction), and the provisions of Contract Schedule 1 (Definitions), Contract Schedule 3 (Contract Charges, Payment and Invoicing), Contract Schedule 5 (Staff Transfer), Contract Schedule 6 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Contract Expiry Date.

M. MISCELLANEOUS AND GOVERNING LAW

35. COMPLIANCE

Health and Safety

- 35.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Goods and/or Services) in accordance with:
- a) all applicable Law regarding health and safety; and

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- b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.
- 35.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract
- 35.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

Equality and Diversity

- 35.4 The Supplier shall perform its obligations under this Contract (including those in relation to provision of the Goods and/or Services) in accordance with:
- a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- b) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- 35.5 The Supplier take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

- 35.6 The Supplier shall comply with the provisions of:
- a) the Official Secrets Acts 1911 to 1989; and
- b) section 182 of the Finance Act 1989.

Environmental Requirements

- 35.7 The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Customer.
- 35.8 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Suppliers written request.

36. ASSIGNMENT AND NOVATION

- 36.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
- 36.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:
- a) any other Contracting Authority; or
- b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- c) any private sector body which substantially performs the functions of the Customer,

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

36.3 A change in the legal status of the Customer shall not, subject to Clause 36.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Customer.

36.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with Clause 36.2c) (the "Transferee" in the rest of this Clause 36.4) the right of termination of the Customer in Clause 30.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 30.4 (Termination on Insolvency) and to Supplier or DMP Guarantor or Contract Guarantor in the definition of Insolvency Event were references to the Transferee).

37. WAIVER AND CUMULATIVE REMEDIES

37.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 44 (Notices) 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 Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.

37.2 Unless otherwise provided in this Contract, rights and remedies under this Contract 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 Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, 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.

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 Contract Commencement 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.

39.2 The Supplier shall not during the Contract Period:

- a) commit a Prohibited Act; and/or
- b) do or suffer anything to be done which would cause the Customer or any of the Customer'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 Contract Period:

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- 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) keep appropriate records of its compliance with its obligations under Clause 39.3a) and make such records available to the Customer on request;
 - c) if so required by the Customer, within twenty (20) Working Days of the Contract Commencement Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - d) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Suppliers behalf from committing a Prohibited Act.
- 39.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 39.1, 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 Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to the Customer pursuant to Clause 39.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Records, Audit Access and Open Book Data).
- 39.6 If the Supplier breaches Clause 39.3, the Customer may by notice:
- a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Suppliers breach; or
 - b) immediately terminate this Contract for material Default.
- 39.7 Any notice served by the Customer under Clause 39.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Contract shall terminate).

40. SEVERANCE

- 40.1 If any provision of this Contract (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 Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract 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 Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

40.3 If the Parties are unable to resolve the Dispute arising under Clause 40 within twenty (20) Working Days of the date of the notice given pursuant to Clause 40.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to Clause 40.

41. FURTHER ASSURANCES

41.1 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 necessary to give effect to the meaning of this Contract.

42. ENTIRE AGREEMENT

42.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, 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 Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

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

43. THIRD PARTY RIGHTS

43.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs and 1.4, 2.3 and 2.8 of Part D of Contract Schedule 5 (Staff Transfer) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

43.2 Subject to Clause 1.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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

43.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 1.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44. NOTICES

44.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 44, an e-mail is accepted as being "in writing".

44.2 Subject to Clause 44.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 44.3 and 44.4)	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
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

44.3 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 Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 44.2:

- i. any Termination Notice (Clause 30 (Customer Termination Rights)),
- ii. any notice in respect of:
 - (a) partial termination, suspension or partial suspension (Clause 33 (Partial Termination, Suspension and Partial Suspension))
 - (b) waiver (Clause 37 (Waiver and Cumulative Remedies))
 - (c) Default or Customer Cause; and
 - (d) Any Dispute Notice.

44.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.3 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™ 1st Class delivery (as set out in the table in Clause) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.5 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 the Dispute Resolution Procedure).

44.6 For the purposes of Clause 44, the address and email address of each Party shall be as specified in the Contract Order Form.

45. DISPUTE RESOLUTION

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

45.2 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Contract until a Dispute has been resolved.

46. GOVERNING LAW AND JURISDICTION

46.1 This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

46.2 Subject to Clause 45 (Dispute Resolution) and Contract Schedule 6 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales (unless stated differently in the Contract Order Form) shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

CONTRACT SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1.1 (Definitions), in this Dynamic Purchasing System Agreement including its Recitals the following expressions shall have the following meanings:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Contract Schedule 12 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Contract Order Form or elsewhere in this Contract ;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Alternative Clauses"	means the alternative Clauses in Contract Schedule 12 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Contract Order Form or elsewhere in this Contract ;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a) a Central Government Body; b) any third party providing goods and/or services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Auditor"	means: a) the Customer's internal and external auditors; b) the Customer'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 Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above.

"Authority"	has the meaning given to it in DMP Schedule 1 (Definitions);
"BACS"	means the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
"Call for Competition Procedure"	means the competition procedure described in paragraph 2 of DMP Schedule 5 (Call for Competition Procedure);
"Contract Commencement Date"	means the date of commencement of this Contract set out in the Contract Order Form;
"Contract "	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the DMP Agreement), which consists of the terms set out in the Contract Order Form and the Contract Terms;
"Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer and/or via the ESFA under this Contract, as set out in Annex 1 of Contract Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
"Contract Period"	means the term of this Contract from the Contract Commencement Date until the Contract Expiry Date;
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Contract Commencement Date or each anniversary thereof;
"Contract Expiry Date"	means: a) the end date of the Contract Initial Period or any Contract Extension Period; or b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;
"Contract Extension Period"	means such period or periods up to a maximum of the number of years in total as may be specified by the Customer, pursuant to Clause 5.2 and in the Contract Order Form;
"Contract Initial Period"	means the initial term of this Contract from the Contract Commencement Date to the end date of the initial term stated in the Contract Order Form;
"Contract Order Form"	means the order form applicable to this Contract containing details of the parties and the service to be provided that is generated at the end of the DMP process or otherwise provided;
"Call for Competition Procedure"	has the meaning given to it in DMP Schedule 1 (Definitions);

"Contract Schedule"	means a schedule to this Contract;
"Contract Tender"	means the tender submitted by the Supplier in response to the Customer's Statement of Requirements following a Call for Competition Procedure and set out at Contract Schedule 5 (Contract Tender);
"Contract Terms"	means the terms applicable to and set out in this Contract;
"Central Government Body"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Change in Law"	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Contract which comes into force after the Contract Commencement Date;
"Change of Control"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Charges"	means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with the Charging Structure;
"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to the Contract, which is set out in Contract Schedule 3 (Contract Prices and Charging Structure);
"Commercially Sensitive Information"	means the Confidential Information listed in the Contract Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Suppliers Confidential Information, as the context specifies;
"Contracting Authority"	means the Authority, the Customer and any other bodies listed in the OJEU Notice;
"Control"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Controller"	take the meaning given in the GDPR
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;

"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <p>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:</p> <ul style="list-style-type: none"> 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 provide the Goods and/or Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>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 provision of the Goods and/or Services;</p>
"Crown"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Crown Body"	has the meaning given to it in DMP Schedule 1 (Definitions);
"CRTPA"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Customer"	means the customer(s) identified in the Contract Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Goods and/or Services;
"Customer Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Contract Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures; b) IPRs created by the Customer independently of this Contract ; <p>and/or</p>

	c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Customer is liable to the Supplier;
"Customer Data"	means: 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, including any Customer's Confidential Information, and which: are supplied to the Supplier by or on behalf of the Customer; or the Supplier is required to generate, process, store or transmit pursuant to this Contract ; or b) any Personal Data for which the Customer is the Data Controller;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Goods and/or Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Customer in connection with this Contract ;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Contract Order Form or agreed in writing between the Parties from time to time in connection with this Contract ;
"Customer's Confidential Information"	means: all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Contract ; and information derived from any of the above;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation"	means i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy
"Data Protection Officer"	take the meaning given in the GDPR
"Data Subject"	take the meaning given in the GDPR
"Data Subject Request"	means request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	means any form of Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;
"Deliverable"	means an item or feature in the supply of the Goods and/or Services delivered or to be delivered by the Supplier at any other stage during the performance of this Contract;
"Delivery"	means delivery in accordance with the terms of this Contract as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Disclosing Party"	has the meaning given to it in Clause 23.10 to 23.18 (Confidentiality);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means 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"	means the dispute resolution procedure set out in Contract Schedule 6 (Dispute Resolution Procedure);
"DMP Agreement"	means the DMP Agreement between the Authority and the Supplier referred to in the Contract Order Form;

"DMP Commencement Date"	means the date of commencement of the DMP Agreement as stated in the Contract Schedule 1 (Definitions);
"DMP Period"	means the period from the DMP Commencement Date until the termination of the DMP Agreement;
"DMP Schedule"	means a schedule to the DMP Agreement;
"Documentation"	means all documentation as: a) is required to be supplied by the Supplier to the Customer under this Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services; c) is required by the Supplier in order to provide the Goods and/or Services; and/or d) has been or shall be generated for the purpose of providing the Goods and/or Services;
"DOTAS"	has the meaning given to it in DMP Schedule 1 (Definitions);
"DPA 2018"	means Data Protection Act 2018;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Contract Commencement Date;
"Employee Liabilities"	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part time workers or fixed term employees; e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;

	<p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"Employment Regulations"	means 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;
"Environmental Information Regulations or EIRs"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Environmental Policy"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
"Exit Plan"	means the exit plan described in paragraph 5 of Contract Schedule 10 (Exit Management);
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Contract Schedule 6 (Dispute Resolution Procedure);
"FOIA"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <p>a) acts, events, omissions, happenings or non happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract ;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>c) acts of the Crown, local government or Regulatory Bodies;</p> <p>d) fire, flood or any disaster; and</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</p> <p>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>iii) any failure of delay caused by a lack of funds;</p>

"Force Majeure Notice"	means 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"	means a supplier supplying the goods and/or Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Goods and/or Services (or any part of the Goods and/or Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Fraud"	has the meaning given to it in DMP Schedule 1 (Definitions);
"General Anti-Abuse Rule"	has the meaning given to it in DMP Schedule 1 (Definitions);
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"GDPR"	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
"Good Industry Practice"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Goods"	means the goods to be provided by the Supplier to the Customer as specified in Annex 2 of Contract Schedule 2 (Goods and and/or Services);
"Government"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Government Procurement Card"	means the Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 ;
"Halifax Abuse Principle"	has the meaning given to it in DMP Schedule 1 (Definitions);
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in DMP Schedule 1 (Definitions);
"ICT Policy"	means the Customer's policy in respect of information and communications technology, referred to in the Contract Order Form, which is in force as at the Contract Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time.
"Information"	has the meaning given to it in DMP Schedule 1 (Definitions);

<p>"Insolvency Event"</p>	<p>means, in respect of the Supplier or DMP Guarantor or Contract Guarantor (as applicable):</p> <p>a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</p> <p>a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>where the Supplier or DMP Guarantor or Contract Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<p>"Installation Works"</p>	<p>means all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract Order Form;</p>

"Intellectual Property Rights" or "IPR"	<p>means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, KnowHow, 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>
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Contract;</p>
"Joint Controllers"	<p>means where two or more Controllers jointly determine the purposes and means of processing;</p>
"Key Performance Indicators" or "KPIs"	<p>means the performance measurements and targets in respect of the Suppliers performance of the DMP Agreement set out in Part B of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators);</p>
"Key Sub-Contract"	<p>means each Sub-Contract with a Key Sub-Contractor;</p>
"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <p>a) nominated as part of the Selection Questionnaire (SQ);</p> <p>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Charges forecast to be payable under this Contract;</p>
"Know-How"	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Contract Commencement Date;</p>
"Law"	<p>means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements, including but not limited to ESFA rules and codes of conduct. with which the Supplier is bound to comply;</p>
"LED"	<p>means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);</p>

"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Suppliers offices, or to and from the Sites) but excluding lunch breaks;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	<p>means:</p> <p>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent.</p> <p>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Commencement Date or to a civil penalty;</p>
"Open Book Data "	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:</p> <p>a) the Suppliers Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;</p> <p>b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:</p> <p>the unit costs and quantity of Goods and any other consumables and bought-in goods and/or services;</p> <p>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;</p>

	<p>a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Suppliers Profit Margin;</p> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Goods and/or Services;</p> <p>e) the Supplier Profit achieved over the Contract Period and on an annual basis;</p> <p>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;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period.</p>
"Order"	means the order for the provision of the Goods and/or Services placed by the Customer with the Supplier in accordance with the DMP Agreement and under the terms of this Contract ;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Suppliers 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";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Personal Data"	take the meaning given in the GDPR;
"Personal Data Breach"	take the meaning given in the GDPR;
"PQQ Response"	means, where the DMP Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification Questionnaire issued by the Authority, and the expressions "Restricted Procedure" and "Pre-Qualification Questionnaire" shall have the meaning given to them in the Regulations;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and

	automatic processing and " Process " and " Processed " shall be interpreted accordingly;
"Processor"	take the meaning given in the GDPR;
"Prohibited Act"	<p>means any of the following:</p> <p>to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Authority or any other public body a financial or other advantage to:</p> <p>i) induce that person to perform improperly a relevant function or activity; or</p> <p>ii) reward that person for improper performance of a relevant function or activity;</p> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>ii) under legislation or common law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or</p> <p>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Protected Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Contract Schedule 4 (Security);
"Project Specific IPR"	<p>means:</p> <p>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Suppliers obligations under this Contract and all updates and amendments to the same; but shall not include the Supplier Background IPR;</p>
"Quality Standards"	<p>means any:</p> <p>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of</p>

	<p>industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b) standards detailed in the specification in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators);</p> <p>c) standards detailed by the Customer in the Contract Order Form or agreed between the Parties from time to time;</p> <p>d) relevant Government codes of practice and guidance applicable from time to time.</p>
"Recipient"	has the meaning given to it in Clauses 23.10 to 23.18 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 27.3 (Rectification Plan Process);
"Registers"	has the meaning given to in Contract Schedule 10 (Exit Management);
"Regulations"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Related Supplier"	means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Goods and/or Services to be provided or as specified in the Contract Order Form;
"Relevant Requirements"	means 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"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 28 (Supplier Relief Due to Customer Cause);
"Replacement Goods"	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Contract Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Contract Expiry Date, whether those services are provided by the

	Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Goods and/or Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Contract or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	has the meaning given to it in Clause 34.6.3 (Protection of Personal Data);
"Security Management Plan"	means the Suppliers security management plan prepared pursuant to paragraph 4 of Contract Schedule 4 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Contract Schedule 4 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy, referred to in the Contract Order Form and / or in contract schedule 2, in force as at the Contract Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the current HMG Security Policy DMP that can be found at https://www.gov.uk/government/publications/securitypolicy-DMP ;
"Service Failure"	means an unplanned failure and interruption to the provision of the Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future;
"Service Level Failure"	means a failure to substantially meet the SLA targets contained in Contract Schedule 2 Annex 3;
"Service Transfer"	means any transfer of the Goods and/or Services (or any part of the Goods and/or Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to in Annex A of Contract Schedule 2 (Goods and Services);
"Sites"	means any premises (including the Customer Premises, the Suppliers premises or third party premises) from, to or at which: <ul style="list-style-type: none"> a) the Goods and/or Services are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Goods and/or Services.
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;

"Staffing Information"	has the meaning give to it in Contract Schedule 5 (Staff Transfer);
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than this Contract or the DMP Agreement, pursuant to which a third party: <ul style="list-style-type: none"> a) provides the Goods and/or Services (or any part of them); b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);
"Sub-Contractor"	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Sub-processor"	Means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
"Supplier"	means the person, firm or company with whom the Customer enters into this Contract as identified in the Contract Order Form;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Goods and/or Services in accordance with this Contract but excluding the Customer Assets;
"Supplier Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by the Supplier before the Contract Commencement Date, for example those subsisting in the Suppliers standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Suppliers Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Contract;
"Suppliers Confidential Information"	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Suppliers attention or into the Suppliers possession in connection with this Contract; c) information derived from any of the above.
"Supplier Equipment"	means the Suppliers hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Contract ;

"Supplier Non-Performance"	has the meaning given to it in Clause 28 (Supplier Relief Due to Customer Cause);
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Suppliers obligations under this Contract;
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Contract Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, 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 Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Contract Order Form;
"Template Contract Order Form"	means the Template Contract Order Form in Annex 1 of DMP Schedule 4 (Template Contract Order Form and Template Contract Terms);
"Template Contract Terms"	means the template terms and conditions in Annex 2 of DMP Schedule 4 (Template Order Form and Template Contract Terms);
"Tender"	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Contract Schedule 5;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
"Test Issue"	means any variance or non-conformity of the Goods and/or Services or Deliverables from their requirements as set out in the Contract;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Goods and/or Services;
"Transferring Customer Employees"	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Suppliers Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;
"Transparency Reports"	means those reports identified in Contract Schedule 9 from time to time;
"Undelivered Services"	has the meaning given to it in Clause 8.5 (Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 31.1 (Termination of Customer Cause for Failure to Pay);

"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Contract Schedule 3 (Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 13.3 (Variation Procedure);
"Variation Form"	means the form set out in Contract Schedule 11 (Variation Form);
"VAT"	has the meaning given to it in DMP Schedule 1 (Definitions);
"Warranty Period"	means, in relation to any Goods, the warranty period specified in the Contract Order Form;
"Worker"	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by Parties in this Contract;

CONTRACT SCHEDULE 2: SERVICES

1. INTRODUCTION

1.1 This Contract Schedule 2 specifies the:

1.1.1 Services to be provided under this Contract, in Annex 1; and

ANNEX 1: THE SERVICES

1. The Supplier will provide the Services as detailed in the Contract Order Form and/or as amended by special terms set out below in this Annex 1.
2. Where the Supplier is to provide apprenticeship training provider services, the Supplier will arrange for and contract with an End Point Assessor in order to complete the apprenticeship process. The Supplier will organise payment for the End Point Assessor using the appropriate element of the Customer's ESFA fund and in line with ESFA rules in force at the time.
3. The Supplier will provide any optional or additional supplementary services required and specified by Contracting Authorities and as outlined in the Customer Needs under optional requirements.



Cabinet Office

Attachment 3 - Statement of Requirement

FURTHER COMPETITION INVITATION

FOR

CONTRACT REFERENCE NUMBER: OGP005

**The Office of Government Property (OGP) within the Cabinet Office Level 6 Chartered Surveyor
Apprenticeship Programme**

DYNAMIC MARKETPLACE AGREEMENT

FOR THE PROVISION OF

APPRENTICESHIP TRAINING AND RELATED SERVICES

Agreement Ref: RM6102

1. DEFINITIONS

Apprentice	Means an individual undertaking an Apprenticeship.
Apprenticeship	An Apprenticeship is a job with an accompanying skills development programme. This includes the training and (where required) end-point assessment for an employee as part of a job with an accompanying skills development programme.
Apprenticeship Contracts	A series of work-related, vocational and professional qualifications, with workplace and classroom based training.
Apprenticeship Levy	The Apprenticeship Levy is a levy on UK employers to fund new Apprenticeships. In England, control of Apprenticeship funding is put in the hands of employers through the Apprenticeship Service. The Levy is charged

	at a rate of 0.5% of an employer's pay bill. Each employer receives an allowance of £15,000 to offset against their Levy payment.
Apprenticeship Standards	each standard covers a specific occupation and sets out the core skills, knowledge and behaviours an Apprentice will need; they are developed by employer groups known as 'trailblazers' https://www.gov.uk/government/collections/apprenticeship-standards
Apprenticeship Standard Review	Periodic review and update to an apprenticeship standard.
Awarding Bodies	Organisation recognised by one of the UK regulators Of equal (for England), CCEA (for Northern Ireland), Welsh Government (for Wales) and/or SQA (for Scotland).
Contract Notice	means the notice referred to in regulation 49 or where relevant regulation 75 (1) (a) set out the Public Contracts Regulation 2015.
CSL	Civil Service Learning
Digital Apprenticeship Account (DAA)	The area in the Apprenticeship Service where employers can manage their funding and Apprentices, view their account balance and plan their spending.
Digital Apprenticeship Service (DAS)	has the meaning as set out in Section 3 Background to the Requirement.
Education and Skills Funding Agency (ESFA)	ESFA is an executive agency, sponsored by the Department of Education and is accountable for funding education and training for children, young people and adults.
End Point Assessment (EPA)	An End Point Assessment (EPA) is the final stage that an Apprentice must go through before they can complete their Apprenticeship.
Freedom of Information (FOI) request	A request for recorded information held by public sector organisations.
Gateway	These are requirements set out in the assessment plan that must be met by the Apprentice prior to undertaking End Point Assessment of the Apprenticeship Standard. They include the completion of English and maths qualifications (where applicable) and completion of any on programme mandatory qualifications (where applicable) along with satisfactory evidence (as determined by the employer, in consultation with the training provider) that the Apprentice has achieved the necessary knowledge, skills and behaviours set out in the standard.
Government Digital Service Standard 10	A set of criteria used by the public sector and the Government Digital Service to check whether a service is good enough for public use.
Government Security Classification Policy	A system for classifying sensitive government data in the United Kingdom.
Higher and Degree Apprenticeships	An Apprenticeship where the main learning is at level 4 or above (including higher education qualifications).
Higher Education Institutions	Any provider which is one or more of the following: a UK university; a higher education corporation; a designated institution.

Implementation Manager	The person responsible for implementing all mandatory requirements of the contract.
Independent Learning Plan	Outlines a programme of learning agreed between the Organisation, Supplier and the Apprentice.
Individual Learning Plan	Sets out how the Apprenticeship Standard or Contract will be achieved for each Apprentice. It outlines a programme of learning agreed between the employer, Training Provider and the Apprentice.
Individual Learner Record	Is the primary data collection about further education and work-based learning in England. ILR data is collected from providers that are in receipt of funding from the Education and Skills Funding Agency.
Information, Advice and Guidance (IAG)	set out in Section 9 Apprentice Service Delivery Requirements.
Mandatory Requirements	Mandatory Requirements are the minimum deliverables that a Supplier shall fulfil in their entirety in order to meet the requirements of this Contract.
National Security Vetting	A system that applies to all those people who by the course of their employment have access to sensitive government assets.
Parliamentary Questions (PQs)	A means used by Members of Parliament to ensure the Government is accountable to the Parliament for its policies and actions and, through the Parliament, to the people. Questions are used by members on both sides of the House to ask, on behalf of the constituents they represent, a Minister about matters of concern relating to Government policy within a Minister's portfolio.
Quality Assurance Agency (QAA)	The independent body that checks on standards and quality in UK higher education.
Register of Apprentice Assessment Organisations (RoAAO)	A list of organisations that have been assessed as being suitable to conduct independent end-point assessment of Apprentices and be in receipt of public funds.
Register of Apprenticeship Training Providers (RoATP)	The register of Apprenticeship Training Providers shows the organisations that are approved to deliver Apprenticeship training to employers using the Apprenticeship service.
SASE Contracts	Specifications for Apprenticeship Standards in England.
Security Check (SC Clearance)	SC clearance determines that a person's character and personal circumstances are such that they can be trusted to work in a position which may involve access to 'secret' information.
Supplier	means the Potential Provider with whom the Authority has concluded a Contract.
Suppliers Learning Management System (LMS)	The software application for the administration, documentation, tracking, reporting and delivery of apprenticeship training programs.
United Kingdom (UK)	United Kingdom, including Northern Ireland, Scotland and Wales (including Scilly Isles and Scottish Highlands and Islands).

Web Content Accessibility Guidelines	Defines how to make Web content more accessible to people with disabilities.
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2. INTRODUCTION

- 2.1. The Cabinet Office (the Authority) is looking for a Sole Supplier to deliver the Level 6 Chartered surveyor Apprenticeship Programme Training and Related Services through Crown Commercial Services Dynamic marketplace (DMP) under this Contract.
- 2.2. The contract will be for an initial 12 months from Monday 7th February 2022 until Monday 6th February 2023 with an option to extend for a further period of 12 months to Monday 5th February 2024 subject to approval.
- 2.3. The Services required under this Contract and all standards set out in this Schedule may be refined (to the extent permitted and set out in Dynamic Marketplace Agreement (DMP) Contract Schedule 5 (Call For Competition procedure) by the Cabinet Office.
- 2.4. The Contract is structured to offer the Cabinet Office flexibility and choice. It will be a matter of judgement for the Cabinet Office to decide which particular programmes are most appropriate to meet their specific requirements and best deliver their business needs.
- 2.5. This Contract shall be managed by the Office of Government Property (OGP) team within the Cabinet Office.
- 2.6. The Authority does not warrant that it will always use the Contract to purchase the services or enter into a Contract.
- 2.7. Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Supplier. This Contract shall not restrict the Authority from acquiring similar services from other entities or sources.
- 2.8. No guarantee is given by the Authority in respect of the levels or aggregate value of the Services, which the Authority shall require the Supplier to provide during the Contract Period. Any levels or aggregate values of Services referred to in the Schedules are indicative only and shall not be binding on the Authority.
- 2.9. The Authority reserves the right to amend Services on an ongoing basis, subject to agreement with the Professions and Apprenticeship Strategy and Delivery team, as part of the continuous improvement of the service offering.

3. CONTRACTING AUTHORITIES

- 3.1. The Contract will be available for use by Cabinet Office staff and any future successors to this organisation.
- 3.2. The Authority is funded by public money, at the front-line of public service delivery and under scrutiny to ensure they provide value for money and support the delivery of excellent public service. To do this it is important they have access to the right quality Apprenticeship Training and Related Services that align to their strategic goals and core purpose.
- 3.3. This Contract has been established to support public sector organisations in achieving their goals and targets by delivering a service that is set-up to source the best quality Apprenticeship training on the market in a cost effective, sustainable way.

4. BACKGROUND TO THE REQUIREMENT

- 4.1. The Cabinet Office is seeking to create a Contract with a selected Education and Skills Funding Agency-registered apprenticeship training provider that supports public and third sector bodies to access training and apprenticeship services that meet UK standards.
- 4.2. In May 2017 the system for the funding and procurement of apprenticeship training changed with the introduction of the Apprenticeship Levy, which requires public sector employers with a pay bill over £3 million each year to make an investment in apprenticeships (0.5% of their annual pay bill).
- 4.3. Employers access the funds through a Digital Apprenticeship Account (DAA) controlled by the Education and Skills Funding Agency (ESFA). The DAA is hosted on a system known as the Digital Apprenticeship Service (DAS). Each levy-paying employer has a virtual account equivalent in value to its contribution, minus an amount equivalent to the notional contribution for its employees that live in Scotland, Wales and Northern Ireland, plus a government top-up of 10%.

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- 4.4. Funds in the Digital Account can only be used to cover the cost of apprenticeship training and end point assessment for apprenticeships undertaken in England. To access the funds employers will need to show, through the AS, that it has a contract for the delivery of a recognised apprenticeship, by a registered provider. For these purposes a registered provider is a training provider that appears on the ESFA Register of Apprenticeship Training Providers (RoATP).
 - 4.5. Employers will inform the ESFA (through the Apprenticeship Standard) who their Apprentices are; the Training Provider will tell the ESFA who it is training for that particular employer. On the strength of this information the ESFA will then pay the Training Provider and subtract the relevant amount from the employer's DAA.
 - 4.6. The Public Sector apprenticeship targets equate to 2.3% of starts each year based on the headcount of employees working for a body in England. This applies to public bodies with 250 or more employees.
 - 4.7. Cabinet Office is to procure high quality Apprenticeship training and related services, which offer good value. Consistency of learning across all formats of learning is a priority for the Civil Service, to this end the Supplier shall be expected to work with all suppliers who provide learning to the Civil Service to make sure there is consistency of models used, so as to ensure that if an Apprentice is undertaking core curriculum learning or Apprenticeship training, they receive the same messages.

5. THE REQUIRED SERVICES

- 5.1. The Supplier shall be required to provide expertise in the development of the Authority's Apprentice scheme. The service provision will include:
- 5.2. Providing advice and guidance to ensure compliance with the government Apprenticeship Levy, and any amendments made by ESFA during the lifetime of this contract;
- 5.3. The development, management, administration and delivery of a training curriculum that will lead to the award of an Apprenticeship related standard and/or qualification;
- 5.4. Ensuring robust, consistent and appropriate training processes are in place to support the development of Apprenticeships across the organisation;
- 5.5. The provision of an Individual Learner Record (ILR), a compliant online portal which allows for multiple levels of access, to enable authorised users (e.g. Apprentices, line managers, employers, Cabinet Office, as appropriate), to log the progress of the training and development of the Apprentice throughout the scheme (Individual Learner Record); and
- 5.6. An End Point Assessment (EPA) process that will lead to the award of a certificate of Apprenticeship by a third party certification body which shall be a registered provider that appears on the ESFA RoATP.
- 5.7. The Supplier shall have the capability to support the Authority, as and when required, with the sourcing, selection and assessment, recruitment and administration of the Apprentices; including drafting job descriptions, attracting candidates, skills screening, long-listing and shortlisting, interview scheduling and references.
- 5.8. The Supplier shall have the capacity within its business and processes to fully meet the requirements at the anticipated volumes referred to throughout this specification from the Contract commencement date. There is no guarantee as to the volume of Apprentices to be processed.
- 5.9. The Supplier shall have the flexibility and scalability to be able to work with the Authority even during periods of peak demand and regardless of size and value; whilst maintaining a high level of service delivery.
- 5.10. The Supplier shall support the future-proofing of the Contract through the flexibility to add new Apprenticeships Standards that are developed and published within the scope of the Contract throughout the duration of the Contract and to flex their delivery to meet any changes to funding bands for particular standards.
- 5.11. The Supplier shall be able to provide a proven fully online nationwide training provision.
- 5.12. The Authority's preference is for the programme to be provided as a closed cohort (with the option to bespoke the learning to make it relevant for Cabinet Office) but to also have the option to put adhoc learners onto open programmes.
- 5.13. The Authority requires the supplier to provide a number of options within the Level 6 standard that might appeal to the different types of managers/leaders employed within the Cabinet Office (i.e. those managing people vs managing projects).
- 5.14. The Authority requires that the training is delivered online.

- 5.15. The Supplier shall be able to provide both the Level 6 Chartered Surveyor BSc (Hons) & MSc apprenticeship routes.
- 5.16. The Supplier shall be able to commence delivery of the apprenticeship programme to start date no later than the end of March 2022.
- 5.17. The Supplier shall be able to supply the following RICS Sector pathways:
- 5.18. Corporate Real Estate
- 5.19. Construction Project Management
- 5.20. Commercial Real Estate

6. DESCRIPTION OF PROGRAMMES

- 6.1. This Contract covers the following Apprenticeship Standard Level 6 Chartered surveyor – ST0331.

Apprenticeship Training and Related Services	
Construction	<p>C</p> <p>6.2. Chartered surveyor (degree) - ST0331 - Level 6 Apprenticeship Standard</p> <p>6.3. Link:https://www.instituteforapprenticeships.org/apprenticeship-standards/chartered-surveyor-degree-v1-2</p>

7. ADDITIONAL SERVICES

- 7.1. This section describes the non-mandatory additional service requirement that the Supplier may fulfil as part of the delivery of the Contract.
- 7.2. The Supplier shall be flexible in providing any relevant additional services that fall within the scope of the requirements of the Contract and which the Authority may require to deliver their Apprenticeships schemes.
- 7.3. The additional services shall include, but not limited to the following:
 - 7.3.1. Enrolment, induction, prior assessment, initial diagnostic testing or similar activity.
 - 7.3.2. Off-the-job training delivered only online, although the Supplier may include other blended learning activity as part of the delivery of an Apprenticeship.
 - 7.3.3. Any training, optional modules, educational trips or trips to professional events in excess of those required to meet the knowledge, skills and behaviours of the Apprenticeship standard. This includes training solely and specifically required for a licence to practice.
 - 7.3.4. Registration and examination (including certification) costs associated with a licence to practise. This applies even where a licence is specified in the Apprenticeship Standard and assessment plan.
 - 7.3.5. Registration and examination, including certification costs, for non-mandatory qualifications (qualifications that are not specifically listed in the standard).

8. ESTIMATED ANNUAL VOLUMES

- 8.1. This section provides indicative estimated annual volumes of assessments for Central Government departments throughout the duration of this Contract. The Authority provides no guarantees in respect of the estimates, as follows:

Level and Standard	Volumes
ST0331 - Level 6 Chartered Surveyor (RICS) accredited BSc/BSc(Honours)	1 Apprentice
ST0331 - Level 6 Chartered Surveyor (RICS) accredited Post Graduate Diploma or MSc	8 Apprentices
Total	9 Apprentices

8.2. The Supplier shall be able to deal with large volumes immediately from the Contract commencement date and shall have capacity to enrol, contact and allocate a programme tutor at the point of receipt.

9. LOCATIONS

9.1. The requirement is a UK wide service provision, either directly by the Supplier, or with the assistance of training providers sub-contracting to the main Training Provider.

10. MANDATORY SERVICE REQUIREMENTS

10.1. This section provides details of the mandatory requirements that the Supplier shall be expected to fulfil in their entirety in order to meet the service delivery requirements of this Contract. It is important that Suppliers take time to fully understand this important part of the service delivery requirement. All mandatory requirements shall be required to commence from the implementation of the Contract with the Authority:

10.1.1. Implementation Requirements

10.1.2. Statutory Requirements

10.1.3. Quality and Service Delivery Requirements

10.1.4. Apprentice Service Delivery Requirements

10.1.5. Marketing, Supplier Communications, Customer Experience and Insight Requirements

10.1.6. Digital Requirements

10.1.7. End Point Assessment (EPA) Requirements

10.1.8. Confidentiality Agreement Requirements

10.1.9. Account Management Requirements

10.1.10. Customer Support Service Requirements

10.1.11. Complaints Handling Requirements

10.1.12. Funding, Invoicing and Payment Requirements

10.1.13. Management information and data reporting requirements

11. IMPLEMENTATION REQUIREMENTS

11.1. This section describes the mandatory implementation requirements the Supplier shall fulfil as part of the delivery of the Contract.

11.2. The Supplier shall provide a named Implementation Manager(s) to the Authority prior to contract commencement date.

11.3. The Supplier shall work with the Authority during mobilisation to instigate an implementation plan. During implementation of the plan and whilst setting up operations, the Supplier shall be required to provide a mechanism to demonstrate a full understanding of the requirement and the ability to deliver the service provision within agreed timescales.

11.4. The Supplier shall ensure that adequate and appropriate resources are available at all times to ensure that Service Levels for the Authority, as defined in Schedule 2 Annex 3 of Attachment 5, are not compromised, particularly during times of peak demand.

12. STATUTORY REQUIREMENTS

12.1. This section describes the mandatory statutory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.

12.2. The Supplier shall be registered on the Education and Skills Funding Agency (ESFA) Register of Apprenticeship Training Providers (RoATP) via the main application route and shall deliver the services in accordance with Apprenticeship funding and performance-management rules for Training Providers. Further information can be found at: <https://www.gov.uk/guidance/apprenticeship-funding-rules>

12.3. The Supplier shall have in place a financial strategy that is simple, clear and in line with Department for Education (formerly BIS/ESFA) funding rules. The full DfE rules can be found at: [apprenticeship-funding-from-may-2017](https://www.gov.uk/guidance/apprenticeship-funding-from-may-2017)

12.4. The Supplier, in agreement with the Authority, shall select an organisation to deliver the End Point Assessment (EPA) (from the Register of Apprentice Assessment Organisations (RoAAO)). The list can be found at: <https://www.gov.uk/guidance/register-of-end-point-assessment-organisations>

12.5. Without prejudice to the generality of Clause 36.1 (Compliance with Law), set out in Dynamic Marketplace Agreement (DMP), the Supplier shall comply with, and consent in

writing to audits in respect of, all current and future applicable aspects of relevant legislation, including but not limited to:

- 12.5.1. The Data Protection Legislation 2018;
- 12.5.2. Human Rights Act 1998;
- 12.5.3. Freedom of Information Act 2000;
- 12.5.4. The Welsh Language Act 1993;
- 12.5.5. Welsh Language (Wales) Measure 2011;
- 12.5.6. Safeguarding Vulnerable Groups Act 2006;
- 12.5.7. Employment Rights Act 1996;
- 12.5.8. Equality Act 2010;
- 12.5.9. Equality and Human Rights Commission – Public Sector Equality Duty (2011);
- 12.5.10. Public Services (Social Value) Act 2012;
- 12.5.11. Apprenticeship Funding Rules.

13. QUALITY AND SERVICE DELIVERY REQUIREMENTS

- 13.1. This section describes the service delivery requirements that the Supplier shall fulfil as part of the delivery of the Contract.
- 13.2. The Supplier shall have upon commencement of the Contract, and retain throughout the Contract Period, either:
- 13.3. Ofsted Grade 1 or Grade 2 'overall effectiveness' quality standards as specified in the Common Inspection Framework through (in order of preference): Ofsted inspections, or externally moderated Self-Assessment Reports or External Verification reports from Awarding Bodies. OR
- 13.4. Ofsted Grade 3 'Overall Effectiveness' and 'Grade 1 or Grade 2 'effectiveness of Apprenticeship provision' as set out in the Ofsted Rating table as follows:

Ofsted Ratings	Description
.	Outstanding
.	Good
.	Requires Improvement
.	Inadequate

- 13.5. Higher Education Institutions must be operating successfully under the formal recognised Quality Assurance Agency for higher education (QAA) arrangements, awarding body and professional body membership.
- 13.6. The Supplier shall notify the Authority immediately if they fall below the mandatory Ofsted grade requirements and or when they fail to comply with the QAA arrangements.
- 13.7. The Supplier shall allow sufficient flexibility in the delivery model to respond to changes made to the Apprenticeship Levy regulations and banding and the periodic Apprenticeship Standard Reviews.
- 13.8. The Supplier shall work in partnership with the Authority to ensure that robust, consistent and appropriate management, training and administrative processes are in place to support the development and delivery of Apprenticeships programmes across the organisation.
- 13.9. The Supplier shall develop and deliver high quality training throughout the duration of the Apprenticeship programme. This will include, and shall not be limited to, all elements defined in the published Apprenticeship Standards covering the relevant knowledge, skills, personal

behaviours, competence, functional skills, safeguarding and Prevent training, employment rights and responsibilities and personal learning and thinking skills.

- 13.10. The Supplier shall ensure that the training programme content is relevant, technically accurate, engaging and up-to-date and is regularly refreshed to align with any changes to the Apprenticeship Standards.
- 13.11. The Supplier shall maintain the flexibility to bespoke, contextualise and/or package the Apprenticeship learning to suit the specific needs of the Apprentice and meet with the Authority's requirements. In all cases the integrity of the learning outcome to the relevant standard shall be maintained.
- 13.12. The Supplier shall provide a consistent Apprentice learning experience to the Authority and devolved administrations, which will include mapping the provision to ensure all Apprentices are receiving the same quality of training.
- 13.13. The Supplier shall provide a dedicated Apprenticeship co-ordinator supported by a learner tracking system, as a mandatory minimum for each of the programmes.
- 13.14. The Supplier shall maintain Individual Learner Records (ILR) that comply with the Education and Skills Funding Agency requirements.
- 13.15. The Supplier shall have in place a clear process and schedule for the payment of each element of the Apprenticeship and End Point Assessment (EPA).
- 13.16. The Supplier shall provide an overview detailing the following, at the commencement of the Contract:
 - 13.16.1. end to end process for the Apprenticeship pathway; and
 - 13.16.2. roles and responsibilities of the Supplier; and
 - 13.16.3. roles and responsibilities of the Authority.
- 13.17. The Supplier shall effectively market Apprenticeships, in accordance with the Authority's needs and aligned to their marketing strategies, so as to ensure that target volumes are delivered.

14. APPRENTICE SERVICE DELIVERY REQUIREMENTS

- 14.1. This section describes the mandatory Apprentice service delivery requirements that the Supplier shall fulfil in as part of the delivery of the Contract.
- 14.2. The Supplier shall ensure all Apprentices are provided the relevant learning and a period of consolidation / observation to assure competence.
- 14.3. The Supplier shall carry out a full, robust initial assessment to ensure that Apprentices are on the right programme and at the right level for Apprentice. The Supplier shall consult with the Authority if they deem an Apprentice is not suitable for the programme and both parties will agree whether the onboarding should continue.
- 14.4. The Supplier shall identify relevant needs for reasonable adjustment at the point of application for the Apprenticeship. The Authority will have responsibility for meeting these needs in the workplace.
- 14.5. The Supplier shall provide a detailed timetable of support, including Information, Advice and Guidance (IAG) for each Apprentice setting out a plan for each individual Apprenticeship pathway. The Supplier shall ensure IAG continues throughout the Apprenticeship programme to help keep the Apprentice on track and aware of what they need to do to progress.
- 14.6. The Supplier shall deliver an online induction for Apprentices and line managers within the first week of the Apprenticeship and register all Apprentices for their Apprenticeship and qualifications and provide each with an Independent Learning Plan in line with DfE (BIS/ESFA) guidance and rules.
- 14.7. The Supplier shall allocate specific support to each Apprentice, in the form of a programme tutor, from enrolment on the Apprenticeship through to End Point Assessment (EPA) qualification. The Supplier shall have in place a process to ensure the consistency and the quality of the line manager support provided.
- 14.8. The Supplier shall ensure that coaches, programme tutors and trainers demonstrate a high level of competence, relevant experience of the Apprenticeship programme requirements and that their Apprenticeship subject area knowledge is kept up-to-date.
- 14.9. The Supplier shall ensure all coaches have a professional qualification and a minimum of 2 years' experience in a role related to the Apprenticeship subject area and can provide the Authority with the relevant curriculum vitae as evidence.
- 14.10. The Supplier shall provide training and consolidation for all programme tutors to ensure consistency of approach and knowledge levels.

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- 14.11. The Supplier shall have in place an effective quality assurance process, which includes monitoring and reviewing coach, programme tutor and trainer performance.
 - 14.12. The Supplier shall conduct interim and formal progress reviews with the Apprentice and with input from trainers, assessors and the Authority employers, this shall not be limited to;
 - 14.12.1. Organising a schedule of regular progress review meetings. The format and frequency of reviews will be agreed with the Authority;
 - 14.12.2. Involving the Apprentice and the workplace supervisor in the reviews;
 - 14.12.3. Identifying progress for learning aims – both to date and between reviews;
 - 14.12.4. Reflecting on and recording progress made towards the Apprentice's learning goals;
 - 14.12.5. Reviewing the Apprentice's Individual Learning Plan and monitoring the achievement of agreed milestones;
 - 14.12.6. Agreeing and recording actions and targets between reviews;
 - 14.12.7. Monitoring and tracking the Apprentice's progress to ensure they are meeting their targets and identify at an early stage those Apprentices requiring additional support and amending the training plan accordingly;
 - 14.12.8. Ensuring the workplace supervisor is involved throughout the Apprentice learner journey and the assessment of the Apprentice suitability for entry into the 'Gateway';
 - 14.12.9. Assessing that an Apprentice has reached the 'Gateway' and determine the Apprentice's readiness for the End Point Assessment (EPA); and
 - 14.12.10. Ensuring the Apprentice and the workplace supervisor have a copy of the record of the reviews.
 - 14.13. The Supplier shall oversee the process of moving Apprentices between postings where necessary.
 - 14.14. The Supplier shall not remove any apprentice from the programme without the direct written consent of the Authority. If written consent is not received within 7 working days, the supplier can consider removal and inform the Authority that the apprentice will be removed unless the Authority replies within 48 hours stating they do not wish the apprentice to be removed. The Supplier will have the final decision on whether the Supplier can remove an individual apprentice from the programme.

15. MARKETING, SUPPLIER COMMUNICATIONS, CUSTOMER EXPERIENCE AND INSIGHT REQUIREMENTS

- 15.1. This section describes the mandatory marketing, supplier communications, customer experience and insight requirements that the Supplier shall be obligated to fulfil as part of the delivery of this contract.
- 15.2. The Supplier shall provide appropriately skilled communications resource to:
- 15.3. Maintain active communications with all those working within the Supplier's organisation and supply chain and to ensure all parties are kept up to date with developments.
- 15.4. Ensure regular co-ordination of communications with the Authority and other delivery partners working for the Authority.
- 15.5. The Supplier shall provide appropriately skilled support to work with the Authority to provide a reactive media service where required.
- 15.6. The Supplier shall provide appropriately skilled marketing and insight resource to do the following:
 - 15.6.1. provide a range of formal and informal feedback mechanisms to evaluate both the employer and Apprentice satisfaction levels, so as to measure the success of the programme and the experiences of the Apprentices
 - 15.6.2. use the employer and Apprentice feedback to reflect back on future programmes to enable continuous improvement in the Apprenticeship programme.
 - 15.6.3. Ensure consistent application of branding, including visual identity and maintaining the Authority style and tone of voice (or development of alternative branding approaches for different customer groups, e.g. SCS, as required). This should be applied to all course materials, customer communications, classroom signage and IT.
- 15.7. The Supplier shall ensure that neither it, nor any of its Sub Contractors, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the

Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.

- 15.8. The Supplier shall have in place a robust strategy to ensure quality and consistency throughout the support and assessment of the Apprenticeships. This will include the delivery of a fully supported digital Apprenticeship utilising web-based content, Authority's departmental communication systems, telephone and email.

16. DIGITAL DELIVERY REQUIREMENTS

- 16.1. This section describes the mandatory digital delivery requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 16.2. The Supplier shall deliver a digital, fully flexible model of support to Apprentices to develop and improve their skills and abilities to enable them to meet the Apprenticeship Standard within the terms of their Apprenticeship agreement.
- 16.3. Good practice to use or conform to the gov design pattern set out within the Government Service manual <https://www.gov.uk/service-manual> and which follows the Design system <https://design-system.service.gov.uk/>.
- 16.4. The Service manual is available to help create and run great public services that meet the Government Service Standard <https://www.gov.uk/service-manual/service-standard>.
- 16.5. The Supplier shall also ensure that the digital 'online' Apprenticeship system build meets the Digital by Default Service Standard, details of which can be found at: <https://www.gov.uk/service-manual/digital-by-default>
- 16.6. The Supplier will ensure that any training is compatible with IT standards of Government departments as specified in the Government Digital Service Standard 10 (or any successor standard).
- 16.7. The Supplier shall ensure to meet Government accessibility guidelines. As well as Code and content meet WCAG level AA (all A and AA requirements as laid out in <https://webaim.org/standards/wcag/checklist>).
- 16.8. The Supplier shall work with Authority to ensure the user experience for Apprenticeship learning feels seamless. Once the Apprenticeship has started, the Apprentice may access their learning via the Suppliers Learning Management System (LMS), which will be required to be compatible with Authority's IT systems.
- 16.9. The Supplier shall ensure that their LMS can be modified to meet the specific Information Technology (IT) requirements of the Authority.
- 16.10. The Authority recognises that it needs to ensure that its ICT products and services can be used by everyone (who is designated as an authorised user), whether Authority's internal staff or external customers from a population of the widest range of characteristics and capabilities.
- 16.11. In order to achieve this, the Authority has adopted the European Standard 'EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe' (which includes extending the Web Content Accessibility Guidelines 2.0, success criterion AA (WCAG v2 AA) to non-web systems) as the minimum accessibility standard.
- 16.12. The Supplier shall not be required to achieve the EN301 549 standard, however the LMS system must have functionality to meet key accessibility elements of the standard and this must be evidenced to the Authority. This may need to be achieved through the use of hardware and/or software being added or connected to a system that increases accessibility for an individual.

17. END POINT ASSESSMENT (EPA) REQUIREMENTS

- 17.1. This section describes the mandatory End Point Assessment (EPA) requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 17.2. The Supplier, in agreement with the Authority, shall select an organisation to deliver the End Point Assessment (EPA (from the Register of end-point assessment organisations)). The list can be found at:
- 17.3. <https://www.gov.uk/government/publications/using-the-register-of-apprentice-assessment-organisations>
- 17.4. The Supplier shall ensure that the registered assessment organisation and the assessor is independent of, and separate from, the training provided by the Supplier and Authority employer.

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- 17.5. The Supplier shall ensure the Apprentice undergoes an EPA at the very end of the on-programme phase of training when the Authority employer and Supplier are satisfied that they have met the “Gateway” criteria to undertake the assessment.
 - 17.6. The Supplier shall ensure the EPA is conducted in accordance with the requirements set out in the assessment plan that accompanies each Apprenticeship Standard.
 - 17.7. The Supplier shall ensure transparency around costs and Service Level agreements for the touch points in the EPA pathway. This will include a full library of products and the timeline and process for issuing. This library will include, but is not limited to, the following:
 - 17.7.1. an induction programme;
 - 17.7.2. an Apprentice handbook;
 - 17.7.3. a line manager guide;
 - 17.7.4. a detailed summary of the delivery model;
 - 17.7.5. a detailed summary of the Apprenticeship learner journey process;
 - 17.7.6. a detailed summary of the costing model; and
 - 17.7.7. a detailed summary of the payment process.
 - 17.8. The Supplier shall provide a robust assessment process for assessment of the Apprenticeship Standard and any related qualifications and this shall include but is not limited to, the following:
 - 17.8.1. Defining the cost of the End Point Assessment (this will clarify what proportion of overall costs are charged by the Training Provider for their services and the End Point Assessment respectively);
 - 17.8.2. Providing assessment criteria/guidance at the start of the Apprenticeship for Apprentices and line managers to work with;
 - 17.8.3. Providing training to ensure quality, standardisation and consistency for all End Point Assessment (EPA) panel members;
 - 17.8.4. Giving the Apprentice at least one month advance notification of their assessment appointment, to enable them to prepare;
 - 17.8.5. Assessing all individuals who have embarked on their Apprenticeship no later than 8 weeks from the end of their Apprenticeship period;
 - 17.8.6. Conducting the assessment in the most appropriate location, as agreed with the Authority. This includes, but not limited to, at Apprentices ‘home’ office location (or region), nearest accredited assessment centre, online assessment;
 - 17.8.7. Wherever possible undertake multiple assessments in a single day in order to maximise delivery and minimise costs;
 - 17.8.8. Notifying outcomes of the assessment in one of the following categories: Pass, Merit, Distinction, or Fail, by applying the criteria for each category as set out in the standards document;
 - 17.8.9. Conveying the overall markings to individuals as a % rating, in addition to the category above;
 - 17.8.10. Providing a meaningful written narrative containing detailed feedback for each assessment, which will be provided to both the Apprentice and their Line Manager within one week of the assessment taking place. The feedback must indicate any areas that need to be addressed by individuals who fall into the Fail category; and
 - 17.8.11. Allowing flexibility for any adjustments in the assessment standards and for these to be reflected in the assessment process itself should that standard change for any reason.

18. CONFIDENTIALITY AGREEMENT REQUIREMENTS

- 18.1. This section describes the confidentiality mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 18.2. The Supplier shall ensure that each of its employees and subcontractors are briefed on organisational security procedures and the provisions of the Official Secrets Act 1989 and are required to sign a Confidentiality Agreement that affirms that they understand the provisions of the Official Secrets Act and the consequences of a breach of it. This will be supplied following notification of award of the Contract and shall be signed on an individual basis prior to any work being undertaken. Suppliers’ employees and subcontractors must not disclose any privileged information they may come across in the course of their work.
- 18.3. The Supplier shall ensure that line managers maintain the standards of security expected and brief employees about the protection of assets and processes under their control. In

particular, the Supplier shall or identify potential difficulties or conflicts of interests among employees and report any concerns to the Authority.

19. ACCOUNT MANAGEMENT REQUIREMENTS

- 19.1. This section describes the account management mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 19.2. The Supplier shall within five (5) days of signing the Contract send to the Authority's email address the name and contact details (including email address and telephone number) of the Account Manager for this Contract . The nominated Account Manager shall have a minimum of two (2) years relevant industry experience.
- 19.3. The Supplier shall also ensure that a Deputy Account Manager has been appointed and their name and contact details (including email address and telephone number) are provided to the Authority prior to any period of the Account Manager's unavailability and absence. The Supplier shall ensure that the Deputy Account Manager has the same powers, Authority and discretion as the Account Manager.
- 19.4. The Supplier shall, when required, support the Authority in providing recommendations in relation to the Goods and Services provided, improve value for money, answering queries, dealing with complaints and technical support.
- 19.5. The Account Manager shall be security cleared to the Authority stated level in advance prior to the Contract commencement date.
- 19.6. The Supplier shall within five (5) days of signing the contract shall provide the Authority, if required, with a named Account Manager, with the level of account management provided by the Supplier being proportionate to the size and requirements of the Authority.
- 19.7. If a change of Account Management personnel is required the Supplier shall inform the Authority of the change at least one (1) month prior to the change taking effect. The Supplier shall ensure a suitable handover period is included in any change of personnel.
- 19.8. The Supplier shall be required to provide and maintain a dedicated customer service team, which will act as the first point of contact and focal point for all enquiries from the Authority.
- 19.9. The Supplier shall be responsible for ensuring that all enquiries received from the Authority are dealt with and resolved in accordance with agreed Key Performance Indicators (Service Levels Agreements).
- 19.10. The Supplier shall be required to undertake visits to Authority sites to discuss the operation of the Contract. The Account Manager shall hold separate Supplier Review Meetings with the Authority with agenda items and the frequency of meetings to be agreed by the Authority.

20. CUSTOMER SUPPORT SERVICE REQUIREMENTS

- 20.1. This section describes the customer support service mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 20.2. The Supplier shall provide a free of charge dedicated helpdesk service that shall comply with the following:
- 20.3. Provision of a customer service helpdesk, which shall be open to answer general enquiries and shall operate as a minimum from office hours 08:30 until 17:30 Monday to Friday throughout the year excluding public holidays.
- 20.4. Provision of operational support and/or emergency call numbers, which shall be operational twenty four (24) hours per day, every day of the year, including public holidays.
- 20.5. All calls shall be charged at no more than a standard call rate (no premium rate telephone numbers). Standard rate in the UK means calls to local and national numbers beginning, 01, 02, and 03. Excluded numbers include non-geographic numbers (e.g. 0871) and Premium Rate Services.
- 20.6. The Supplier shall ensure that all Supplier Personnel appointed to the helpdesk have the relevant skills; experience and knowledge of the services offered under the Contract and have the capability to manage the relationship.
- 20.7. The Supplier shall provide support to all queries, will include but not be limited to providing;
 - 20.7.1.1. Advice and support employers to claim any additional employer incentive payments (compilation, age etc.);
 - 20.7.1.2. Advice on their individual requirements;
 - 20.7.1.3. Plan most cost effective delivery model (agree locations of cohorts etc.); and

20.7.1.4. Resolve any issues.

21. COMPLAINTS HANDLING REQUIREMENTS

- 21.1. This section describes the complaints handling mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 21.2. The Supplier shall have a robust and auditable complaints procedure for logging, investigating, managing and escalating and resolving complaints initiated by the Authority and their users.
- 21.3. The supplier shall ensure its complaints procedure complies to the following;
- 21.3.1.1. All complaints shall be logged and acknowledged within twenty four (24) hours of receipt;
 - 21.3.1.2. All complaints shall be resolved within five (5) working days of the original complaint being made unless otherwise agreed with the Authority;
 - 21.3.1.3. All complaints shall be recorded, together with the actions and timescales taken to resolve the complaint.
- 21.4. The Supplier shall ensure that the level and nature of complaints arising and proposed corrective action that are under way or completed will be reviewed by the parties periodically, as appropriate according to the numbers of complaints arising, and in any event at intervals of not less than 1 month.
- 21.5. The Supplier shall analyse and identify any pattern of complaints and bring these to the attention of the Authority during supplier review meetings.
- 21.6. The Supplier shall provide the Authority with one report per month for the duration of this Contract capturing all complaints. These reports shall include the date the complaint was received and resolved, complainant contact details, the nature of the complaint and actions agreed and taken to resolve the complaint and any changes to the programme and lessons learnt.

22. FUNDING, INVOICING AND PAYMENT REQUIREMENTS

- 22.1. This section describes the funding, invoicing and payment mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 22.2. The Supplier shall adhere to the levy system for Apprenticeships and details of how the government funds Apprenticeship training in England from May 2017 is available at: <https://www.gov.uk/hmrc-internal-manuals/apprenticeship-levy>
- 22.3. The Supplier shall work with the Authority to agree a total price for all aspects of the provision, which should be set within the maximum funding band set by ESFA. This will include the costs of activity directly related to the Apprenticeships and other costs directly related to the Apprenticeships in accordance with the Apprenticeship funding and performance-management rules for Training Providers, outlined in the link below: <https://www.gov.uk/guidance/apprenticeship-funding-rules#the-latest-rules-2019-to-2020>
- 22.4. The Supplier shall ensure that for each Apprenticeship Standards, this shall include the cost of the End Point Assessment (EPA) agreed with the Apprentice assessment organisation.
- 22.5. The Supplier shall make it explicitly clear if resit costs are covered in the pricing. If they are not covered, these costs must be agreed with the Authority prior to the commencement of any Apprenticeship delivery.
- 22.6. The Supplier shall adhere to the following process once the Apprenticeship training has started. Monthly payments will be automatically taken from the Contracting Authorities (Civil Service departments) employers account and sent to the Supplier and the Supplier shall pass funds on to the End Point Assessment organisation.
- 22.7. The Supplier shall support the Authority employers when/if they request additional services, which take the costs above the relevant funding band and this, will be negotiated in advance and agreed in writing by each employer as this will need to be paid outside of Digital Apprenticeship Service (DAS).
- 22.8. The Supplier shall be aware that when employers are taking delivery of the Services, the Authority will be liable to pay the Supplier directly for any agreed additional services, which takes the costs above the relevant funding band. In addition, no payments shall be made by the Authority directly to sub-contractors.
- 22.9. The Supplier shall be aware that the Authority shall specify which payment option(s) they will require, for any services and charges outside of the DAS. The Supplier's systems shall have the ability to support payment options as directed by the Authority to include

Government Procurement Card (GPC), Purchase to Pay system (P2P) and manual electronic invoicing arrangements.

- 22.10. The Supplier shall interface with the Authority's e-Commerce (P2P) system when required by the Authority.
- 22.11. The Supplier shall provide an alternative solution as agreed where the Authority does not require a full e-Commerce (P2P) system.
- 22.12. The Supplier shall comply with the Authority's requirements in respect of authorisation, invoicing and payment processes and procedures specified by individual customer organisations. For example, requirements may include, but not be limited to, consolidated invoicing, invoicing by cost centre; electronic invoicing; invoicing to different levels of detail, etc.
- 22.13. The Supplier shall unless otherwise specified by the Authority, submit all invoices in arrears to individual ordering points or as instructed by the Authority. Frequency of invoicing will be agreed between the Supplier and the Authority before commencement of service delivery.
- 22.14. The Supplier shall provide a full itemised breakdown of charges and all invoices should be clearly addressed; and refer to the service provided and charging basis.
- 22.15. The Supplier shall provide the option to use an electronic invoicing process and/or payment card at no additional charges, as invoices will be settled by the Authority.
- 22.16. The Supplier shall pay all undisputed invoices within 30 calendar days of issue of a valid invoice.
- 22.17. The Supplier shall pay any undisputed sums, which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

23. MANAGEMENT INFORMATION AND DATA REPORTING REQUIREMENTS

- 23.1. This section describes the mandatory management information (MI) and data reporting mandatory requirements that the Supplier shall fulfil in its entirety as part of the delivery of the Contract.
- 23.2. The Supplier shall provide MI and Data Reporting to the Authority free of charge.
- 23.3. The Supplier shall comply with the management information requirements.
- 23.4. The Supplier shall have appropriate management information systems in place to collect, check, manage and return monthly data to the ESFA through the Individual Learner Record (ILR) and other learner data collection as specified in the link below:
<https://www.gov.uk/government/collections/individualised-learner-record-ilr>
- 23.5. The Supplier shall provide secure and accurate weekly/monthly MI to the Authority to monitor starts, completions and progress against Apprenticeship and End Point Assessment. This must be provided on the basis of the cohort as a whole and for individual Apprentices and adhere to nationally recognised Data Protection and records and retention policies, data transfer agreements with the employer and information security requirements.
- 23.6. The Supplier shall provide to the Authority with MI, on a frequency to be agreed, which will detail the number of Apprentices assessed in week/month and by rolling total to date, highlighting any re-sits. Further reporting MI will include, but shall not be limited to:
 - 23.6.1. Number of passes, distinctions and fails in week and by rolling total, highlighting any resits in amongst these;
 - 23.6.2. Total numbers of Apprentices scheduled for assessment, highlighting any re-sits in amongst these;
 - 23.6.3. Number of Apprentices not yet scheduled for assessment, highlighting any re-sits in amongst these;
 - 23.6.4. Full details of Apprentices who have needed to reschedule their assessment (name/ organisation/ location/ employment contract end date etc.), highlighting any re-sits in amongst these;
 - 23.6.5. Full details of any Apprentices who are unavailable for assessment at any point full within 6 weeks of the expiration of the period of their Apprenticeship;
 - 23.6.6. Precise details of any Apprentices who fail to attend their scheduled assessment appointment.
- 23.7. The Supplier shall have the flexibility to produce for the Authority any requested tailored / non-standard MI reports free of charge on a number of different levels, including but not limited to Apprentice and scheme.
- 23.8. The Supplier shall provide the required data or information free of charge, within one working day of request by the Authority. As the Authority may request data and reports on an

ad hoc basis to assist with Freedom of Information (FOI) requests, Parliamentary Questions (PQs) or other committee requests.

- 23.9. The Supplier shall provide the Authority with a minimum of one case study per quarter, for the duration of this Contract, which will evidence savings, benefits and/or added value of this Contract.
- 23.10. The Supplier shall comply with the Authority equality and diversity data collection and monitoring requirements. The Supplier will be required to provide such data and information if applicable.
- 23.11. The Supplier shall work with the Authority to provide management information and evaluation data in a format consistent with other learning and development provided through the Authority. The Supplier shall agree to adopt the MI template set out in Attachment 7 MI Template and return them on the agreed timescales, unless an exemption is agreed by the Authority at least 48 hours before expected return date.
- 23.12. The Supplier shall provide the data on a monthly basis to enable the Authority to share it with their other suppliers for the purpose collating into a consolidated report for dissemination to each department.
- 23.13. The Supplier shall accept that the Authority anticipate a data sharing agreement being in place that specifies how their other suppliers would be able to use the data and who would have access to it for the purpose of collating and disseminating the information contained.



Cabinet Office

Attachment 6 Assurance Schedule

FURTHER COMPETITION INVITATION

FOR

CONTRACT REFERENCE NUMBER: OGP005

**The Office of Government Property (OGP) within the Cabinet Office Level 6 Chartered Surveyor
Apprenticeship Programme**

DYNAMIC MARKETPLACE AGREEMENT

FOR THE PROVISION OF

APPRENTICESHIP TRAINING AND RELATED SERVICES

Agreement Ref: RM6102

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DEFINITIONS

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the ICT Environment;
Breach of Security	an event that results, or could result, in: set out in Section 1 Assurance Requirements Paragraph 1.39 to 1.43 : any unauthorised access to or use of the Government Data, the Services and/or the Information Management System; and/or the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract;
Certification Requirements	means the information security requirements set out in Section 1 Assurance Requirements Paragraph 1.21 to 1.27;
CHECK Service Provider	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the ITHC services required by the Section 1 Assurance Requirements Paragraph 1.11 (a) and 1.28 (a);
CREST Service Provider	means a company with a SOC Accreditation from CREST International;
Higher Risk Sub-contractor	means a Sub-contractor that Processes Government Data, where that data includes either: the Personal Data of 1000 or more individuals in aggregate during the period between the Contract Start Date and the End Date; or Special Category Personal Data, other than information about the access or dietary requirements of the individuals concerned;
Incident Management Process	is the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Government Data, the Buyer, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Section 1 Assurance Requirements Paragraph 1.10 to 1.16 using Annex 1 Security Management plan template.

Information Assurance Assessment	is the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 3 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using Annex 1 Security Management plan template.
Information Management System	Means; those parts of the Supplier System, and those of the Sites, the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Government Data; and the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources.
Information Security Approval Statement	a notice issued by the Buyer which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that the Buyer: (i) is satisfied that the identified risks have been adequately and appropriately addressed; (ii) the Buyer has accepted the residual risks; and (iii) the Supplier may use the Information Management System to Process Government Data.
ITHC	has the meaning set out in Section 1 Assurance Requirements Paragraph 1.11 (a).
Medium Risk Sub-contractor	means a Sub-contractor that Processes Government Data, where that data includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the Contract Start date and the End Date; and does not include Special Category Personal Data, other than information about the access or dietary requirements of the individuals concerned.
Personal Data	has the meaning given in the Data Protection Legislation.
Personal Data Breach	has the meaning given in the Data Protection Legislation.
Personal Data Processing Statement	sets out: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Government Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Government Data against a Security Breach including a Personal Data Breach, which shall be prepared by the Supplier set out in Section 1 Assurance Requirements Paragraph 1.13 (c) and included in Annex 1 Security Management Plan template.
Process Government Data	any operation which is performed on Government Data, whether or not by automated means, including adapting, altering, collecting, combining, copying, destroying, erasing, organising, publishing retrieving, storing, structuring, transmitting or otherwise using Government Data.
Required Changes Register	is the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Section 1 Assurance Requirements Paragraph 1.13 (b) together with the date by which such change shall be implemented and the date on which such change was implemented.
Risk Register	is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Buyer for approval in accordance with set out in Section 1 Assurance Requirements Paragraph 1.13.
Security Management Plan	comprises: (i) the Information Assurance Assessment; (ii) the Personal Data Processing Statement; (iii) the Required Changes Register; and, (iv) the Incident Management

	Process, which shall be prepared by the Supplier using Annex 1 Security Management Plan template.
Sites	comprise: (i) those premises from which the Services are to be provided; (ii) those premises from which Supplier manages, organises or otherwise administers the provision of the Services; and, (iii) those premises at which any Supplier Equipment or any party of the Supplier System is located.
Special Category Personal Data	means the categories of Personal Data set out in article 9 (1) of the GDPR.
Supplier System	the information and communications technology system used by the Supplier in implementing and performing the Services, including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System).

1. ASSURANCE REQUIREMENTS

Introduction

This Schedule sets out:

- 1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Government Data and the Information Management System;
- 1.2 the Certification Requirements applicable to the Supplier and each of those Subcontractors which Processes Government Data;
- 1.3 The security requirements in Section 2 of this Schedule with which the Supplier must comply;
- 1.4 the tests which the Supplier shall conduct on the Information Management System during the Term;
- 1.5 the Supplier's obligations to:
 - (a) return or destroy Government Data on the expiry or earlier termination of this Contract; and
 - (b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 1.36; and
 - (c) report Breaches of Security to the Buyer.

Principles of Security

- 1.6 The Supplier acknowledges that the Buyer places great emphasis on the confidentiality, integrity and availability of the Government Data and, consequently on the security of:
 - (a) the Sites;
 - (b) the Supplier System;
 - (c) the Information Management System; and
 - (d) the Services.

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- 1.7 Notwithstanding the involvement of the Buyer in assessing the arrangements which the Supplier shall implement in order to ensure the security of the Government Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
- (a) the security, confidentiality, integrity and availability of the Government Data whilst that Government Data is under the control of the Supplier or any of its Subcontractors; and
 - (b) the security of the Information Management System.
- 1.8 The Supplier shall:
- (a) comply with the security requirements in Section 2; and
 - (b) ensure that each Sub-contractor that Processes Government Data complies with the security requirements in Section 3.
- 1.9 The Supplier shall provide the Buyer with access to Supplier Personnel responsible for information assurance to facilitate the Buyer's assessment of the Supplier's compliance with its obligations set out in this Section 3 at reasonable times on reasonable notice.

Information Security Approval Statement

- 1.10 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of Section 2 Security Requirements, including any requirements imposed on Sub-contractors set out in Section 3 of this Schedule, from the Contract Start Date.
- 1.11 The Supplier may not use the Information Management System to Process Government Data unless and until:
- (a) the Supplier has procured the conduct of an ITHC of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 1.28; and
 - (b) the Buyer has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this section.
- 1.12 The Supplier shall document in the Security Management Plan how the Supplier and its Subcontractors shall comply with the requirements set out in this section and the contract in order to ensure the security of the Government Data and the Information Management System.
- 1.13 The Supplier shall prepare and submit to the Buyer within 20 Working Days of the date of this contract, the Security Management Plan, which comprises:
- (a) an Information Assurance Assessment;
 - (b) the Required Changes Register;
 - (c) the Personal Data Processing Statement; and
 - (d) the Incident Management Process.

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- 1.14 The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:
- (a) an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Government Data; or
 - (b) a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.
- 1.15 If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Buyer for review within 10 Working Days or such other timescale as agreed with the Buyer.
- 1.16 The Buyer may require and the Supplier shall provide the Buyer and its authorised representatives with:
- (a) access to the Supplier Personnel;
 - (b) access to the Information Management System to audit the Supplier and its Subcontractors' compliance with this Contract; and
 - (c) such other information and/or documentation that the Buyer or its authorised representatives may reasonably require,
 - (d) to assist the Buyer to establish whether the arrangements which the Supplier and its Subcontractors have implemented in order to ensure the security of the Government Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Buyer in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Buyer with the access that it requires within 24 hours of receipt of such request.

Compliance Reviews

- 1.17 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.
- 1.18 The Supplier shall notify the Buyer within 2 Working Days after becoming aware of:
- (a) a significant change to the components or architecture of the Information Management System;
 - (b) a new risk to the components or architecture of the Service;
 - (a) a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out Section 2 Security Requirements Paragraph 2.19;
 - (c) a change in the threat profile;

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- (d) a significant change to any risk component;
 - (e) a significant change in the quantity of Personal Data held within the Service;
 - (f) a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - (g) an audit report produced in connection with the Certification Requirements indicates significant concerns.
- 1.19 Within 10 Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Buyer for review and approval.
- 1.20 Where the Supplier is required to implement a change, including any change to the Information Management System the Supplier shall effect such change at its own cost and expense.

Certification Requirements

- 1.21 The Supplier shall be certified as compliant with:
- (a) Cyber Essentials PLUS
 - (b) and shall provide the Buyer with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Government Data.
- 1.22 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:
- (a) Cyber Essentials PLUS,
 - (b) and shall provide the Buyer with a copy of each such certificate of compliance before the Higher-Risk Subcontractor shall be permitted to receive, store or Process Government Data.
- 1.23 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.
- 1.24 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Government Data:
- (a) securely destroys Government Data only on Sites which are included within the scope of an existing certification of compliance; and
 - (b) are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Buyer.

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- 1.25 The Supplier shall provide the Buyer with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Government Data.
- 1.26 The Supplier shall notify the Buyer as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Subcontractor ceases to be compliant with the Certification Requirements and, on request from the Buyer, shall or shall procure that the relevant Sub-contractor shall:
- (a) immediately ceases using the Government Data; and
 - (b) procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Government Data in accordance with the requirements set out in this Paragraph.
- 1.27 The Buyer may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Section. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

Security Testing

- 1.28 The Supplier shall, at its own cost and expense procure and conduct:
- (a) testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("ITHC"); and
 - (b) such other security tests as may be required by the Buyer,
 - (c) The Supplier shall complete all of the above security tests before the Supplier submits the Security Management Plan to the Buyer for review in accordance within section 1.10; and it shall repeat the ITHC not less than once every 12 months during the Term and submit the results of each such test to the Buyer for review in accordance with this Paragraph.
- 1.29 In relation to each ITHC, the Supplier shall:
- (a) agree with the Buyer the aim and scope of the ITHC;
 - (b) promptly, and no later than 10 working days, following the receipt of each ITHC report, provide the Buyer with a copy of the full report;
- 1.30 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
- (a) prepare a remedial plan for approval by the Buyer (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the ITHC report:
 - (i) how the vulnerability will be remedied;
 - (ii) the date by which the vulnerability will be remedied;

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- (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Buyer, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (b) comply with the Vulnerability Correction Plan; and
 - (c) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 1.31 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Buyer.
- 1.32 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Buyer with a copy of the test report and:
- (a) propose interim mitigation measures to vulnerabilities in the Information System known to be exploitable where a security patch is not immediately available; and
 - (b) where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Buyer.
- 1.33 The Supplier shall conduct such further tests of the Supplier System as may be required by the Buyer from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.
- 1.34 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in set out in Section 2 of this Schedule.

Security Monitoring and Reporting

- 1.35 The Supplier shall:
- (a) monitor the delivery of assurance activities;
 - (b) maintain and update the Security Management Plan in accordance with Section 1 Assurance Requirements Paragraph 1.13 (b);
 - (c) agree a document which presents the residual security risks to inform the Buyer's decision to give approval to the Supplier to Process, store and transit the Government Data;
 - (d) monitor security risk impacting upon the operation of the Service;

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- (e) report Breaches of Security in accordance with the approved Incident Management Process;
 - (f) agree with the Buyer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Buyer within 30 days of the date of this Contract.

Malicious Software

- 1.36 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Government Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 1.37 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 1.38 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 1.37 shall be borne by the parties as follows:
 - (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
 - (b) by the Buyer, in any other circumstance.

Breach of Security

- 1.39 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.
- 1.40 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:
- 1.41 Immediately take all reasonable steps necessary to:
 - (a) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (b) remedy such Breach of Security to the extent possible;
 - (c) apply a tested mitigation against any such Breach of Security; and
 - (d) prevent a further Breach of Security in the future which exploits the same root cause failure;

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- 1.42 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Buyer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.
- 1.43 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Subcontractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Buyer.

2. SECURITY REQUIREMENTS

Security Classification of Information

- 1.1 If the provision of the Services requires the Supplier to Process Government Data, which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Buyer from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

End User Devices

- 1.2 The Supplier shall ensure that any Government Data, which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.
- 1.3 The Supplier shall ensure that any device which is used to Process Government Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>

Networking

- 1.4 The Supplier shall ensure that any Government Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

Personnel Security

- 1.5 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 1.6 The Buyer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Buyer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Government Data or data which is classified as OFFICIAL-SENSITIVE.
- 1.7 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 2.5 and 2.6 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

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- 1.8 The Supplier shall ensure that Supplier Personnel are only granted such access to Government Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 1.9 The Supplier shall ensure that Supplier Personnel who no longer require access to the Government Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Government Data revoked within 1 Working Day.

Identity, Authentication and Access Control

- 1.10 The Supplier shall operate an access control regime to ensure:
- (a) all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - (b) all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 1.11 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 1.12 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such records available to the Buyer on request.

Data Destruction or Deletion

- 1.13 The Supplier shall:
- (a) prior to securely sanitising any Government data or when requested the Supplier shall provide the Government with all Government Data in an agreed open format;
 - (b) have documented processes to ensure the availability of Government Data in the event of the Supplier ceasing to trade;
 - (c) securely erase in a manner agreed with the Buyer any or all Government Data held by the Supplier when requested to do so by the Buyer;
 - (d) securely destroy in a manner agreed with the Buyer all media that has held Government Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Buyer; and
 - (e) implement processes which address the CPNI and NCSC guidance on secure sanitisation.

Audit and Protective Monitoring

- 1.14 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of

access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Government Data.

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

Location of Government Data

- 1.17 The Supplier and any of its Sub-contractors must not process any Government Data outside the EEA without the prior written consent of the Buyer, which may be subject to conditions of which the Supplier and any of its Sub-contractors must comply. Any permission must be in writing to be effective.

Vulnerabilities and Corrective Action

- 1.18 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Government Data.
- 1.19 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 1.20 Subject to Paragraph 1.28, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
- (a) 7 days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - (b) 30 days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - (c) 60 days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 1.21 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 2.16 shall be extended where:
- (a) the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided

such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 2.16 if the vulnerability becomes exploitable within the context of the Services;

- (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
- (c) the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

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

Secure Architecture

1.23 The Supplier shall design the Information Management System in accordance with:

- (a) the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
- (b) the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- (c) the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
- (d) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- (e) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (f) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (g) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (h) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;

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- (i) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Government Data and/or the Buyer System that those personnel be subject to appropriate security screening and regular security training;
 - (j) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
 - (k) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
 - (l) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Buyer to securely manage the Buyer's use of the Service;
 - (m) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
 - (n) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
 - (o) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
 - (p) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Buyer with the audit records it needs to monitor access to the Service and the Government Data held by the Supplier and/or its Sub-contractors; and
 - (q) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

3. SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

Application of Annex

- 3.1 This Annex applies to all Sub-contractors that Process Government Data.
- 3.2 The Supplier must:
- (a) ensure that those Sub-contractors comply with the provisions of this Annex;
 - (b) keep sufficient records to demonstrate that compliance to the Buyer; and
 - (c) ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Government Data.

Designing and managing secure solutions

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

Data Processing, Storage, Management and Destruction

- 3.5 The Sub-contractor must not Process any Government Data outside the EEA without the prior written consent of the Buyer, which may be subject to conditions of which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.6 The Sub-contractor must securely erase any or all Government Data held by the Sub-contractor when requested to do so by the Buyer; and securely destroy all media that has held Government Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Buyer.

Personnel Security

- 3.7 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.
- 3.8 The Sub-contractor must, if the Buyer requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Government

Data containing Personal Data above certain volumes specified by the Buyer, or containing Special Category Personal Data.

- 3.9 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo DBS checks.

End User Devices

- 3.10 The Sub-contractor shall ensure that any Government Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.
- 3.11 The Supplier shall ensure that any device used to Process Government Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

Networking

- 3.12 The Supplier shall ensure that any Government Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

Patching and Vulnerability Scanning

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

Third Party Subcontractors

- 3.14 The Sub-contractor must not transmit or disseminate the Government Data to any other person unless specifically authorised by the Buyer. Such authorisation must be in writing to be effective and may be subject to conditions.
- 3.15 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Government Data where the licence terms of that software purport to grant the licensor rights to Progress the Government Data greater than those rights strictly necessary for the use of the software.

Annex 1: Security Management Plan Template

ANNEX 2: THE GOODS
N/A

ANNEX 3: Performance Levels.

1.0 Key Performance Indicators

- 1.1 Table 1 below, sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 From the Contract Commencement Date, the Supplier shall monitor its performance against each KPI and shall send the Authority a report detailing the level of service actually achieved.
- 1.3 The Authority will not apply any Service Points for 3 months from the Contract Commencement Date (the “**Grace Period**”) but the Supplier will still be required to monitor its performance against each KPI as set out in Paragraph 4.2. After the Grace Period, Service Points shall accrue for any KPI Failure and shall be calculated in accordance with Paragraph 6.2 to 6.4 below.
- 1.4 The Supplier’s performance shall be measured using the following Key Performance indicators:

Table 1

Category	KPIs			Measureme nt Period	Target Performance Level	Minor KPI Failure	Serious KPI Failure	Severe KPI Failure	KPI Service Threshold
On-boarding	KPI 1	Eligibility	Supplier must provide notification on the status of Apprentice's eligibility within 48 hours (working hours) of pre enrolment induction to departments (employers).	Weekly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 2	Enrolment	Supplier must ensure Apprentices are enrolled and their record must be visible on the Authority Service Recipient’s (customer) Digital Apprenticeship Service (DAS) account within 2 weeks of confirmed eligibility.	Fortnightly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

	KPI 3	Induction	Supplier to arrange and deliver Apprentice induction session in the first 2 weeks of Apprentice enrolment.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 4	Enrolment	Supplier must ensure that individual Apprentices are on-boarded within a maximum of 8 weeks of receiving a valid Apprentice's details.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Talent Coach	KPI 5	Allocation	Supplier shall ensure that there is a talent coach resource assigned within 1 week of an Apprentice's details being visible on the DAS.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 6	Replacement	Supplier shall ensure that there is continuous talent coach support to apprentices and a permanent replacement Talent coach is allocated within 1 week of the previous Talent coach departure.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Ongoing Performance	KPI 17	Progression	Supplier must ensure each Apprentice and their line manager have a formal progress review every 4 weeks .	Quarterly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 8	Reviews	Supplier must implement an agreed action plan for Apprentices who are behind expected progression for maximum 2 successive progress reviews .	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Delivery	KPI 9	Timetable	Supplier must ensure diary invitations with timings for each module to be sent 4 weeks	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

			in advance to each Apprentice and their line manager.						
	KPI 10	Cancellation	Supplier must give 24 hours' notice (working hours) if an Apprentice appointment / learning has to be cancelled and rescheduled.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Assessments	KPI 11	Assessments	Supplier must ensure the assignments are marked and quality feedback provided within 4 weeks of submission date.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 12	Assessments	Supplier must ensure the results of assignments provided within 4 weeks of submission date.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
End Point Assessment (EPA)	KPI 13	Completions	Supplier shall ensure that Apprentices are ready at least 8 weeks ahead of the EPA (measured by gateway declaration being completed).	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 14	Completions	Supplier must work towards Pass /distinctions at EPA is no less than 80% .	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Performance Management Information	KPI 15	Data	Supplier must provide Apprenticeship MI Data by 10 Working Days with 100% accuracy to individual departments and Profession Leads upon request.	weekly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

	KPI 16	Data	Supplier must ensure to provide central contract MI Data by 10 Working Days with 100% accuracy.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
Customer Satisfaction	KPI 17	Queries	Supplier must ensure to respond to initial enquiries within 24 hours (working hours) of receipts.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 18	Queries	Supplier must ensure to resolve telephone and email enquiries within 5 Working Days of receipt.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 19	Complaints	Supplier must ensure to confirm receipt of any complaint received within 24 hours (working hours) .	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
	KPI 20	Complaints	Supplier must ensure to provide resolutions (or holding responses if complicated) to complaints or issues within 5 Working Days of receipt and making learners aware of complaints procedures and timelines.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

1.5 The Supplier shall also comply with the following (which link to the KPIs set out in Table 1 above):

Table 2

Service Level Agreement (SLA)			Reporting Frequency	Target Performance Level	Minor KPI Failure	Serious KPI Failure	Severe KPI Failure	KPI Service Threshold
SLA1	Enrolment	Supplier shall ensure efficiency of enrolment of Apprentices within a maximum of 12 weeks utilising other government cohorts if required (with small tolerance for exceptional cases only) that aligns with KPI 6.	Quarterly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA2	Quality of Delivery and on-boarding	Supplier shall support Authority Service Recipients to ensure retention of Apprentices on schemes, limiting withdrawals to a maximum 10% withdrawal rate, providing early warning of 'amber' performance rating and providing incentives to reduce drop-outs.	Quarterly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA3	Timetable	Supplier shall ensure that each Apprentice and their line manager are notified of any changes to Apprenticeship programme timetable at least 1 month before scheduled change.	Quarterly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA4	Notification of meetings	Supplier shall ensure that "skills coach" meetings are shared with each Apprentice and their line manager and are occurring on a regular basis	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA5	Delivery	Supplier will be expected to give adequate notice if any learning/ coaching is cancelled and rescheduled using the agreed format of communication. However where a problem is anticipated at least 2 weeks prior to any learning/ coaching then Supplier must ensure that the Apprentices are made aware of the new schedule one week prior to the date of any learning/ coaching session.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

SLA6	Progression	Supplier will be expected to notify the SPOC within 5 Working Days whenever the Apprentice's progress performance is rated as "Red" and provide the reason for the red rating being given.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA7	Talent Coach	Supplier shall ensure talent coaches/Assessors are available to engage with Apprentices within a maximum of 4 weeks post enrolment.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA8	Talent Coach	Supplier shall provide notification of any proposed changes to talent coaches/Assessors at least 2 weeks prior to the change taking place.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA9	Line Management engagement	Supplier to arrange line manager induction sessions at least 1 week after Apprentices are enrolled and record is visible on employer's Digital Apprenticeship Service (DAS) account.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA10	Line Management engagement	Supplier to engage with the Apprentice's line manager to ensure that they are satisfied with delivery through surveys issued on a (quarterly) basis.	Quarterly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%
SLA11	Satisfaction	Supplier to engage with Apprentices to ensure that they are satisfied with learning through pulse surveys issued on a (weekly/quarterly) basis.	Monthly	95%	94.9% - 90%	89.9% - 85%	84.9% - 75%	below 75%

<p>SLA12</p>	<p>Continuous Improvement</p>	<p>The Supplier will be expected to work with Civil Service departments, Professions Leads, Apprenticeship Strategy team and the Authority to discuss and agree on at least an annual basis reasonable suggestions for new or potential improvements, innovations, modifications, development or changes to the provisions of the services to drive and improve learner experience.</p> <p>If agreed, the supplier at its own costs will use reasonable efforts to work to implement such changes to enhance the provision of the services to improve the learner experience.</p> <p>The supplier shall implement appropriate system and business processes which enable the supplier to:</p> <ol style="list-style-type: none"> 1. Monitor the quality, efficiencies and productivity of the provision of the services; and to continuously monitor any improvements over time 2. Identify and present lessons learnt in relations to the provisions of the services which can be implemented by the supplier to improve the services. <p>The supplier will carry out regular and appropriate market analysis and present findings to monitor and assess:</p> <ol style="list-style-type: none"> 1. Developments of innovation that may be applicable to services 2. Development of good industry practices which may be applicable to services 3. The manner in which other organisations are delivering similar goods or services to achieve improvements in quality, efficiencies and productivity relevant to the services. 	<p>Every 6 Months</p>	<p>95%</p>	<p>94.9% - 90%</p>	<p>89.9% - 85%</p>	<p>84.9% - 75%</p>	<p>below 75%</p>
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CONTRACT SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING

1. GENERAL PROVISIONS

- 1.1 This Contract Schedule 3 details:
 - 1.1.1 the Contract Charges for the Goods and/or the Services under this Contract ; and
 - 1.1.2 the payment terms/profile for the Contract Charges;
 - 1.1.3 the invoicing procedure; and
 - 1.1.4 the procedure applicable to any adjustments of the Contract Charges.

2. CONTRACT CHARGES

- 2.1 The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Contract Schedule 3.
- 2.2 The Supplier acknowledges and agrees that the Contract Charges cannot be increased during the Contract Period.

3. COSTS AND EXPENSES

- 3.1 The Contract Charges include all costs and expenses relating to the Goods and/or Services and/or the Suppliers performance of its obligations under this Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:
 - 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Contract Commencement Date.

4. PAYMENT TERMS/PAYMENT PROFILE

- 4.1 The payment terms/profile which are applicable to this Contract are set out in Annex 2 of this Contract Schedule 3.

5. INVOICING PROCEDURE

- 5.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer and in accordance with the provisions of this Contract.
- 5.2 The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Customer may specify (but, in respect of paper form, subject to paragraph 7.3 below)):
 - 5.2.1 contains:
 - (a) all appropriate references, including the unique order reference number set out in the Contract Order Form; and

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- (b) a detailed breakdown of the Delivered Goods and/or Services, including the Milestone(s) (if any) and Deliverable(s) within this Contract to which the Delivered Goods and/or Services relate, against the applicable due and payable Contract Charges; and
 - 5.2.2 shows separately:
 - (a) any form of Service Credits due to the Customer; and
 - (b) the VAT added to the due and payable Contract Charges in accordance with Clause 14.5 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - 5.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
 - 5.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
 - 5.3 If the Customer is a Central Government Body, the Customer's right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at **Procurement policy note 11/15: unstructured electronic invoices - Publications - GOV.UK** which sets out the policy in respect of unstructured electronic invoices submitted by the Supplier to the Customer (as may be amended from time to time).
 - 5.4 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and/or Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
 - 5.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
 - 5.6 The Supplier shall submit invoices directly to the Customer's billing address set out in the Contract Order Form.

6. ADJUSTMENT OF CONTRACT CHARGES

- 6.1 The Contract Charges shall only be varied:
 - 6.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 13.1 to 13.2 of this Contract (Legislative Change); or
 - 6.1.2 and/ or in accordance with DMP Schedule 3 (DMP Prices and Charging structure), Part A Pricing Matrix Quarterly Adjustment Schedule.

ANNEX 1: CONTRACT CHARGES

1. The contract Charges are as set out in the Contract Order Form.
2. Where applicable, ESFA funding rules and funding bands apply.
Redacted

ANNEX 2: PAYMENT TERMS/PROFILE

1. Payment by the customer to be made in accordance with the applicable and in force ESFA funding rules.
2. Where the Contract Charges exceed the ESFA funding bands and the Customer is required to make additional payment (as set out in the Contract Order Form)_the Supplier will issue a monthly invoice, detailing spend and costs incurred to date.
3. Payments in addition to the ESFA funding (for the provision of additional services) will be settled up front and within the first month of the Contract.
4. Each monthly invoice will contain the following:
 - a. The precise amount the Supplier has drawn down from the Customer's ESFA apprenticeship service account for that month and cumulatively.
 - b. Any balance outstanding (representing fees in excess of the ESFA funding band and costs of any additional services).
 - c. Order and contract reference details.

CONTRACT SCHEDULE 4: SECURITY

1. DEFINITIONS

1.1 In this Contract Schedule 4, the following definitions shall apply:

"Breach of Security" means the occurrence of:

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

in either case as more particularly set out in the Security Policy;

2. INTRODUCTION

2.1 The purpose of this Contract Schedule 4 is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met;

2.2 This Contract Schedule 4 covers:

2.2.1 principles of protective security to be applied in delivering the Goods and/or Services;

2.2.2 the creation and maintenance of the Security Management Plan; and

2.2.3 obligations in the event of actual or attempted Breaches of Security.

3. PRINCIPLES OF SECURITY

3.1 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Goods and/or 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:

3.2.1 is in accordance with the Law and this Contract ;

3.2.2 as a minimum demonstrates Good Industry Practice;

3.2.3 meets any specific security threats of immediate relevance to the Goods and/or Services and/or the Customer Data; and

3.2.4 complies with the Customer's ICT Policy.

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- 3.3 Subject to Clause 23 of this Contract (Security and Protection of Information) the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Contract Schedule 4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Contract Schedule 4. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

4.2.1 The Security Management Plan shall:

- (a) comply with the principles of security set out in paragraph 3 of this Contract Schedule 4 and any other provisions of this Contract relevant to security;
- (b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
- (c) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Goods and/or Services, processes associated with the provision of the Goods and/or Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Goods and/or Services;
- (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services, including the Customer Premises, the Sites, and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Goods and/or Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and/or Services comply with the provisions of this Contract ;

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- (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and the Security Policy; and
 - (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Goods and/or Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Contract Schedule 4.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Contract Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), the Supplier shall prepare and deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Customer in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Contract Schedule 4. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for Approval. The parties will 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 Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Customer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2. However a refusal by the Customer 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.
- 4.3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3.2 of this Contract Schedule 4 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Contract Schedule 4.

4.4 Amendment and Revision of the Security Management Plan

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
 - (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Goods and/or Services and/or associated processes;
 - (c) any change to the Security Policy;

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- (d) any new perceived or changed security threats; and
 - (e) any reasonable change in requirements requested by the Customer.
- 4.4.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Customer. 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; and
 - (c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Customer or otherwise) shall not be implemented until Approved by the Customer.

5. BREACH OF SECURITY

- 5.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security as defined in any Security Management Plan or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
- 5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- 5.3 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 Security policy or the requirements of this Contract Schedule 4, then any required change to the Security Management Plan shall be at no cost to the Customer.



ANNEX 1: SECURITY MANAGEMENT PLAN

University College of Estate Management have Cyber Essential Plus but due to the number of apprentices expected to be enrolled onto the Level 6 Chartered Surveyor programme being 9, the organisation doesn't need to complete a Security Management Plan.

However as part of managing the contract, the Office of Government Property team within the Cabinet Office will still expect University College of Estate Management to provide regularly updates on any changes to security and certifications as part of contract review meetings.

CONTRACT SCHEDULE 5: STAFF TRANSFER

1. DEFINITIONS

In this Contract Schedule 5, the following definitions shall apply:

“Admission Agreement” The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;

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

“Employee Liabilities”

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;

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;

“Fair Deal Employees”	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Contract Schedule 5 to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

“Service Transfer Date”

the date of a Service Transfer;

“Staffing Information”

in relation to all persons identified on the Suppliers Provisional Supplier Personnel List or Suppliers Final Supplier Personnel List, as the case may be, such

information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Suppliers Final Supplier Personnel List”

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Suppliers Provisional Supplier Personnel List”

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will

no longer be provided by the Supplier;

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

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

“Transferring Supplier Employees” those employees of the Supplier and/or the Suppliers Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Contract Schedule 5 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.
- 1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (i) the Customer; and
 - (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. CUSTOMER INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

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- (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
 - 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
 - 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
 - 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take

such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Contract Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where

applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the

Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and

- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
 - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

6.1 The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
 - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
 - 1.2.4 agree that the Customer may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

- 6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the period either:
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 1.2 Subject to Paragraph 6, the Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to Paragraphs 2.2 and 6, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

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- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
 - 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
 - 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
 - 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing

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- to the Customer and, where required by the Customer, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Contract Commencement Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as

having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding,

claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Suppliers failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Suppliers failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
 - 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

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- 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
 - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
 - 1.2.4 agree that the Customer may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

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- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

- 6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the period either
- 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
- 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be

unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
- 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or 1.4.3 the situation has not otherwise been resolved, the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4

provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Contract Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract ;
 - 1.1.3 the date which is twelve (12) Months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Suppliers Provisional Supplier Personnel List, together with the Staffing Information in relation to the Suppliers Provisional Supplier Personnel List and it shall provide an updated Suppliers Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Suppliers Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Suppliers Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Suppliers Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

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- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Suppliers Provisional Supplier Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Suppliers Provisional Supplier Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Suppliers Provisional Supplier Personnel List regardless of when such notice takes effect.
- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Suppliers Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

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- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

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- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
 - 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
 - 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 2.4.2 arising from the Replacement Suppliers failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
 - 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

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- 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or

Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their

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- transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 5: LIST OF NOTIFIED SUB-CONTRACTORS

CONTRACT SCHEDULE 6: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Contract Schedule 6, the following definitions shall apply:

- "CEDR"** the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
- "Counter Notice"** has the meaning given to it in paragraph 6.2 of this Contract Schedule 6;
- "Exception"** a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Contract or in the supply of the Goods and/or Services;
- "Expert"** the person appointed by the Parties in accordance with paragraph 5.2 of this Contract Schedule 6; and
- "Mediation Notice"** has the meaning given to it in paragraph 3.2 of this Contract Schedule 6;
- "Mediator"** the independent third party appointed in accordance with paragraph 4.2 of this Contract Schedule 6.

2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Contract Schedule 6, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Contract Schedule 6, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Contract Schedule 6);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Contract Schedule 6); and

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- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Contract Schedule 6) or litigation (in accordance with Clause 46 of this Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Contract Schedule 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Contract Schedule 6.
- 2.6 In exceptional circumstances where the use of the times in this Contract Schedule 6 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 of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
- 2.7.2 in paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 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.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer Representative and the Supplier Representative.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Contract Schedule 6; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Contract Schedule 6 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Contract Schedule 6.

4. MEDIATION

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- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Contract.
 - 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
 - 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the 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.
 - 4.4 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 Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 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, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 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;
 - 5.3.4 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;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Contract Schedule 6.

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- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Contract Schedule 6 or be subject to the jurisdiction of the courts in accordance with Clause 46 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Contract Schedule 6 shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 46 of this Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Contract Schedule 6, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Contract Schedule 6 or commence court proceedings in the courts in accordance with Clause 46 of this Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Contract Schedule 6, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Contract Schedule 6);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) 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;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

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

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- 7.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 7.1.2 where compliance with paragraph 2.1 of this Contract Schedule 6 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CONTRACT SCHEDULE 7: PROCESSING PERSONAL DATA AND DATA SUBJECTS

This SCHEDULE 7 shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this SCHEDULE 7 shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: redacted, Data Protection Officer, Cabinet Office,
2. The contact details of the Processor’s Data Protection Officer are: redacted
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this SCHEDULE 7.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 23.25.</p> <p><i>“Notwithstanding Clause 23.25 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>Personal data relating to the contact details of apprentices such as their home address, telephone number and email address, EDI data such as ethnic background and disability and details of their academic achievement such as module marks.</i></p> <p><i>In respect of Personal Data under Joint Control, Clauses 23.25 - 23.39 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Contract Schedule 8 instead.”</i></p>
Subject matter of the processing	<i>redacted</i>
	<i>redacted</i>
Duration of the processing	<i>redacted</i>
Nature and purposes of the processing	<i>redacted</i>
Type of Personal Data being Processed	<i>redacted</i>
Categories of Data Subject	<i>redacted</i>

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>redacted</i></p>
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CONTRACT SCHEDULE 8: JOINT CONTROLLER AGREEMENT

[**Guidance:** insert only where Joint Controller applies in Schedule 7]

[In this Annex the Parties must outline each party's responsibilities for:

- providing information to data subjects under Article 13 and 14 of the GDPR.
- responding to data subject requests under Articles 15-22 of the GDPR
- notifying the Information Commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing under Article 30 of the GDPR
- carrying out any required Data Protection Impact Assessment
- The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clauses 23.25 - 23.39

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Contract Schedule 8 should be used instead of Clause 23.25 - 23.39]

CONTRACT SCHEDULE 9: TRANSPARENCY REPORTS

List of Transparency Reports

Title	Content	Format	Frequency
[Performance]	[]	[]	[]
[Call off Contract Charges]	[]	[]	[]
[Key Sub-contractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management]	[]	[]	[]

CONTRACT SCHEDULE 10: EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Contract Schedule 10, the following definitions shall apply:

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Goods and/or Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Contract Schedule 10;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Contract Schedule 10 for managing the Parties' respective obligations under this Contract Schedule 10;
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Contract;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub Contractor in connection with the Goods and/or Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Contract Schedule 10;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Contract Schedule 10;
"Termination Assistance Period"	means 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 Assistance as such period may be extended pursuant to paragraph 6.2 of this Contract Schedule 10;

"Transferable Assets"	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Customer or any Replacement Supplier to provide the Goods and/or Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 9.2.1 of this Contract Schedule 10;
"Transferring Contracts"	has the meaning given to it in paragraph 9.2.3 of this Contract Schedule 1

2. INTRODUCTION

- 2.1 This Contract Schedule 10 describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Contract Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Goods and/or Services from the Supplier to the Customer and/or a Replacement Supplier at the Contract Expiry Date.

3. OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

- 3.1 During the Contract Period, the Supplier shall:
- 3.1.1 create and maintain a Register of all:
- (a) Supplier Assets, detailing their: make, model and i) asset number;
 - ii) ownership and status as either Exclusive Assets or Non Exclusive Assets;
 - iii) Net Book Value;
 - iv) condition and physical location; and
 - v) use (including technical specifications); and
 - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Goods and/or Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Goods and/or Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier

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- provides the Goods and/or Services and to enable the smooth transition of the Goods and/or Services with the minimum of disruption;
- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Goods and/or Services.
- 3.2 The Supplier shall:
- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Goods and/or Goods and/or Services under this Contract; and
- 3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party IPR and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Goods and/or Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Contract Schedule 10 which the Supplier proposes to enter into after the Contract Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative SubContractor or provider of goods and/or services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Contract Schedule 10 and provide written notification of such appointment to the other Party within three (3) Months of the Contract Commencement Date. The Suppliers Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Contract Schedule 1The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Contract Schedule 1The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Contract Schedule 10 and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF GOODS AND/OR SERVICES

- 4.1 On reasonable notice at any point during the Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 4.1.1 details of the Service(s);
- 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 4.1.3 an inventory of Customer Data in the Suppliers possession or control;

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- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Goods and/or Services;
 - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
 - 4.1.7 such other material and information as the Customer shall reasonably require,
(together, the “Exit Information”).
- 4.2 The Supplier acknowledges that the Customer may disclose the Suppliers Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Contract Schedule 10 disclose any Suppliers Confidential Information which is information relating to the Suppliers or its Sub-Contractors’ prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Goods and/or Services and shall consult with the Customer regarding such proposed material changes; and
 - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.5.1 prepare an informed offer for those Goods and/or Services; and
 - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) Months after the Contract Commencement Date, deliver to the Customer an Exit Plan which:
- 5.1.1 sets out the Suppliers proposed methodology for achieving an orderly transition of the Goods and/or Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Contract Schedule 10;
 - 5.1.3 is otherwise reasonably satisfactory to the Customer.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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- 5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Goods and/or Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the Goods and/or Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Contract Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);
 - 5.3.7 proposals for the training of key members of the Replacement Suppliers personnel in connection with the continuation of the provision of the Goods and/or Services following the Contract Expiry Date charged at rates agreed between the Parties at that time;
 - 5.3.8 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Goods and/or Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Goods and/or Services;
 - 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Goods and/or Services;
 - 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 5.3.11 proposals for the disposal of any redundant Goods and/or Services and materials;
 - 5.3.12 procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Contract Schedule 10 (Staff Transfer);
 - 5.3.13 how each of the issues set out in this Contract Schedule 10 will be addressed to facilitate the transition of the Goods and/or Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Goods and/or Services during the Termination Assistance Period; and

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- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Goods and/or Services.

6. TERMINATION ASSISTANCE

- 6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Contract Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Goods and/or Services.
- 6.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Goods and/or Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:
- 7.1.1 continue to provide the Goods and/or Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Contract Schedule 10, provide the Termination Assistance;
 - 7.1.2 in addition to providing the Goods and/or Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Goods and/or Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Goods and/or Services to the Customer and/or its Replacement Supplier;
 - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Contract Schedule 10 without additional costs to the Customer;
 - 7.1.4 provide the Goods and/or Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
 - 7.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.
- 7.2 Without prejudice to the Suppliers obligations under paragraph 7.1.3 of this Contract Schedule 10, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Contract Schedule 10 without additional costs to the Customer, any additional costs incurred by the Supplier in

providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

- 7.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Goods and/or Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Suppliers ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. TERMINATION OBLIGATIONS

- 8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Suppliers performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Contract Schedule 10), the Supplier shall:
- 8.2.1 cease to use the Customer Data;
 - 8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
 - 8.2.4 return to the Customer such of the following as is in the Suppliers possession or control:
 - (a) all materials created by the Supplier under this Contract in which the IPRs are owned by the Customer;
 - (b) any equipment which belongs to the Customer;
 - (c) any items that have been on-charged to the Customer, such as consumables; and
 - (d) all Customer Property issued to the Supplier under Clause 31 of this Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
 - (e) any sums prepaid by the Customer in respect of Goods and/or Services not Delivered by the Contract Expiry Date;
 - 8.2.5 vacate any Customer Premises;
 - 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
 - 8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
 - (a) such information relating to the Goods and/or Services as remains in the possession or control of the Supplier; and

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- (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Goods and/or Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Suppliers performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Contract Schedule 10), 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 Goods and/or Services or termination services or for statutory compliance purposes.
- 8.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Goods and/or Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS AND SUB-CONTRACTS

- 9.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Goods and/or Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Contract Schedule 10, the Customer shall provide written notice to the Supplier setting out:
- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
 - 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets, the Customer and/or the Replacement Supplier requires the continued use of; and
 - 9.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Customer and/or its Replacement Supplier to provide the Goods and/or Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Goods and/or Services or the Replacement Goods and/or Replacement Services.

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- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Contract Charges at the Contract Expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Contract Charges.
- 9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Contract Schedule 10 that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7 The Customer shall:
- 9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 9.7.2 once a Transferring Contract is novated or assigned to the Customer 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.
- 9.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 9.9 The Supplier shall indemnify the Customer (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 Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Contract Schedule 10 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. SUPPLIER PERSONNEL

- 10.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Goods and/or Services or part of them for any reason, Contract Schedule 10 (Staff Transfer) shall apply.
- 10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged

in the provision of the Goods and/or Services from transferring their employment to the Customer and/or the Replacement Supplier.

- 10.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Suppliers personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.
- 10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Supplier shall not for a period of twelve (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 Customer and/or the Replacement Supplier, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

11. CHARGES

- 11.1 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Contract Schedule 10 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

12. APPORTIONMENTS

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
 - 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 12.1.2 the Customer 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
 - 12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Contract Schedule 10 as soon as reasonably practicable.

CONTRACT SCHEDULE 11: VARIATION FORM

No of Contract Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] ("**the Customer**")

and

[insert name of Supplier] ("**the Supplier**")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation..

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

CONTRACT SCHEDULE 12: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Contract Schedule 12 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Contract Order Form and, if requested in the Contract Order Form, shall apply to this Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Contract Order Form, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Contract Schedule 12);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Contract Schedule 12); 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Contract Schedule 12);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Contract Schedule 12);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Contract Schedule 12).
- 2.2 The Customer may, in the Contract Order Form, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5.1 of this Contract Schedule 12);
 - 2.2.2 NHS Additional Clauses (see paragraph 6.1 of this Contract Schedule 12)
 - 2.2.3 MOD (“Ministry of Defence”) Additional or Alternative Clauses (see paragraph 7 of this Contract Schedule 12)

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Contract Schedule 12 and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Contract Schedule 12 shall be deemed to be incorporated into this Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

- 4.1.1 Law and Jurisdiction (Clause 57)
- (a) References to “England and Wales” in the original Clause 57 of this Contract (Law and Jurisdiction) shall be replaced with “Scotland”.
 - (b) Where legislation is expressly mentioned in this Contract the adoption of Clause 4.1.1 (a) shall have the effect of substituting the equivalent Scots legislation.

4.2 NORTHERN IRELAND LAW

- 4.2.1 Law and Jurisdiction (Clause 57)
- (a) References to “England and Wales” in the original Clause 57 of this Contract (Law and Jurisdiction) shall be replaced with “Northern Ireland”.
 - (b) Where legislation is expressly mentioned in this Contract the adoption of Clause 4.1.1(a) shall have the effect of substituting the equivalent Northern Ireland legislation.

4.2.2 Insolvency Event

In Contract Schedule 1 (Definitions), reference to "section 123 of the Insolvency Act 1986" in limb f) of the definition of Insolvency Event shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

4.3 NON-CROWN BODIES

Clause 46.3.1(a) of this Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 34.5 of this Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause 36.2.1(b)(i) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

In Clause 36.2.1(b)(ii) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

In Clause 36.2.1(b)(iii) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

5. ADDITIONAL CLAUSES: GENERAL

5.1 SECURITY MEASURES

5.1.1 The following definitions to be added to Contract Schedule 1 (Definitions) to the Contract Order Form and the Contract Terms:

"Document" includes specifications, plans, drawings, photographs and books;

"Secret Matter" means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

"Servant" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

5.1.2 The following new Clause 58 shall apply:

58. Security measures

- 58.1. The Supplier shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:
- 58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
 - 58.1.2. disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;
 - 58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier;
or
 - 58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.
- 58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:
- 58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
 - 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Contract or where Goods and/or Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
 - 58.2.3. that no photograph of any item to be supplied under this Contract or any portions of the Goods and/or Services shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and

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- 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of Clause 58 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of Clause 58 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 58.8. The Supplier shall, if directed by the Customer, include in the SubContract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by Clause 58,

but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:

58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under Clause 58 into operation in such cases and to such extent as the Customer may direct;

58.8.2. if there comes to its notice any breach by the SubContractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of Clause 58, notify such breach forthwith to the Customer; and

58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.

58.9. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of Clause 58 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

58.11 Nothing in Clause 58 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

58.11. If the Customer shall consider that any of the following events has occurred:

58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of Clause 58; or

58.11.2. that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Contract, the Customer may by notice in writing terminate this Contract forthwith.

58.12. A decision of the Customer to terminate this Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

58.13. Suppliers notice

58.13.1. The Supplier may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 58.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and

58.13.2. the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

58.14. Matters pursuant to termination

58.14.1. The termination of this Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

58.14.2. The Supplier shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Contract if this Contract had not been terminated, or at a reasonable price;

58.14.3. The Customer may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of Clause 58 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the

Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and

58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Contract.

58.15. If, after notice of termination of this Contract pursuant to the provisions of 58.11:

58.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or

58.15.2. the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Contract was based is an event mentioned in Clause 58.11.3,

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

58.15.3. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

58.15.4. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract;

58.15.6. if hardship to the Supplier should arise from the operation of Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 58.15 shall be final and conclusive; and

58.15.7. subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. NHS ADDITIONAL CLAUSES

6.1 The following new Clause 59 shall apply:

59. Coding Requirements

59.1. Unless otherwise confirmed and/or agreed by the Customer in writing and subject to Clause 59.2, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:

59.1.1. Prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Contract as at the Commencement Date; or

59.1.2. Where further categories of Goods are to be supplied in accordance with any Variation, prior to or on the date of implementation of such Variation.

59.2. Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 59.1 within the timescales stated, the Supplier shall provide an implementation plan and suggested timetable within which the Supplier shall achieve such compliance. The implementation plan and suggested timetable must be submitted by the Supplier for agreement by the Customer prior to the first Delivery of relevant Goods under the Contract (such agreement not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and implementation plan shall be referred to and resolved in accordance with Contract Schedule 11: Dispute Resolution Procedure. Once a timetable and implementation plan have been agreed by the Customer, the Supplier shall comply with such timetable and plan as a condition of this Contract.

59.3. Once product information relating to the Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Contract Period, keep such information updated with any changes to the product data relating to the Goods.

7. MOD ADDITIONAL CLAUSES

7.1 The definition of Contract in Schedule 1 (Definitions) to the Contract Terms shall be replaced with the following:

7.1.1 **"Contract"** means this written agreement between the Customer and the Supplier consisting of the Contract Order Form and the Contract Terms and the MoD Terms and Conditions.

7.2 The following definitions shall be inserted into Schedule 1 (Definitions) to the Contract Terms:

7.3 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Contract Terms:

7.3.1 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.

7.3.2 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

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- 7.4 The following clauses shall be inserted into Clause 2 of this Contract (Due Diligence):
- 7.5 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.
- 7.5.1 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.
- 7.6 The following new Clause 60 shall apply:

6Access To MOD Sites

60.1. In this Clause 60:

60.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the

property of the Customer and shall be surrendered on demand or on completion of the supply of the Goods and/or Services.

60.1.2. The Suppliers representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's

Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

60.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Suppliers personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Contract.

60.1.4. Where the Suppliers representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible,

normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Suppliers reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Suppliers representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 60.1.5. Out-patient medical treatment given to the Suppliers representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Suppliers representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 60.1.6. Accidents to the Suppliers representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 60.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Suppliers representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 60.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Suppliers representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

CONTRACT SCHEDULE 13: CONTRACT TENDER

Redacted