

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 User Experience (UX) Professional Integrated Degree Design Apprenticeship Training Services**. Dated 16/09/2022.

The Supplier agrees to supply the Goods and/or 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	<u>SR16666321</u>
From	HMRC
To	QA Limited

1. CONTRACT PERIOD

1.1	Commencement Date	16/09/2022 Cohort 1 Commencement: September/October 2022 Cohort 2 commencement date: TBC - in agreement with Customer and Supplier
1.2	Expiry Date (Apprenticeship programme completion date / End Point Assessment completion date)	Contract Expiry Date - 31/10/2028 Cohort 1 apprenticeship programme completion date / End Point Assessment completion date: October 2027 Cohort 2 apprenticeship programme completion date / End Point Assessment completion date: TBC - in agreement with Customer and Supplier

2. SERVICES REQUIRED

2.1	<p>Services Required.</p> <p>APPRENTICESHIP TRAINING PROVIDER SERVICES / END POINT ASSESSOR SERVICES / BOTH.</p> <p>LOCATION</p> <p>APPRENTICESHIP TYPE AND SPECIFIC APPLICABLE INSTITUTE FOR APPRENTICESHIPS STANDARD</p> <p>NUMBER OF STUDENTS</p> <p>CLASS BASED</p> <p>ADDITIONAL SERVICES</p>	<p>Training provider services and End Point Assessor services required</p> <p>HMRC Require a National Location Provider</p> <p>The Apprenticeship type is Level 6 User Experience (UX) Professional Integrated Degree Design ST0470 / Institute for Apprenticeships</p> <p>There will be a total of 16 Apprentices over a 2-year period. 8 Apprentices in each cohort per year.</p> <p>Online / Classroom</p> <p>DPS training Filters used:</p> <p>Apprentice cohort: Public</p> <p>Min apprentice number: No preference</p> <p>Max apprentice number: 8 per year</p> <p>Training availability: any</p> <p>Training delivery: Any</p> <p>Location: National</p> <p>Training Timetable: modular schedule</p> <p>PII / Process: UK</p> <p>Additional requirements:</p> <ul style="list-style-type: none"> • RCDTS¹ is a recipient to this contract since • students may also be RCDTS employees • EPA to be accessed through a web browser and involve no downloading of additional software² • Flexibility to amend modules • 1 free resit per year per student • Support with Breaks in Learning where needed
		<p><input type="checkbox"/> Support with the recruitment of Level 6 User Experience (UX) Professional Apprentices as and where needed.</p> <p><input type="checkbox"/> HMRC contractual clauses apply</p> <p><input type="checkbox"/> ¹ RCDTS is a government-owned not-for-profit company controlled by HMRC. RCDTS will access the contract in accordance with the corporate support provided to it by HMRC under a Support Services Agreement, and it will provide the IT services back to HMRC under a Master Services Agreement.</p> <p>² Should EPA requirements change; the Supplier must provide the Customer with at least 6 weeks 'notice.</p>

3. CONTRACT PERFORMANCE

3.1	Required Apprenticeship Standard [ie the required apprenticeship course]	The standard the apprenticeship must meet is Level 6 User Experience (UX) Professional Integrated Degree Design ST0470
3.1	Quality Standards	Continued adherence to the relevant Institute for Apprenticeships industry standard. (www.instituteforapprenticeships.org/) Maintained ESFA registration and accreditation. General industry good practice

4. PAYMENT

4.1	Contract Charges	Contract Charges = [REDACTED] Contract Charges comprises: Levy services funded by ESFA: Fully funded; Top up for fees in excess of ESFA band: N/A; Additional extra services: N/A Includes the cost of any subcontractors and the cost of an approved end point assessor.
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 Contract Schedule 3
4.3	Customer billing address	[REDACTED]

Information redacted under section 43 (2) of FOI Act 2000.

5. LIABILITY AND INSURANCE

5.1	Suppliers limitation of Liability	In Clause 25 of the Contract Terms
5.2	Insurance	[REDACTED]

Information redacted under section 43 (2) of FOI Act 2000.

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:

Name and Title	<div>██████████</div> Senior Sales Manager
Date	15 September 2022

For and on behalf of the Customer:

Name and Title	<div>██████████</div> Assistant Director
Date	15 September 2022

Information redacted under section 43 (2) of FOI Act 2000.

Crown Commercial Service

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

CONTENT		TABLE OF
A.	BACKGROUND	5
B.	PRELIMINARIES	5
	1. DEFINITIONS AND INTERPRETATION	5
	2. ESFA RULES AND GOVERNANCE	6
	3. DUE DILIGENCE	6
	4. REPRESENTATIONS AND WARRANTIES	7
C.	DURATION OF CONTRACT	9
	5. CONTRACT PERIOD	9
D.	CONTRACT PERFORMANCE	9
	6. IMPLEMENTATION	9
	7. GOODS AND/ OR SERVICES	9
	8. SERVICES	11
	9. QUALITY STANDARDS	12
	10. DISRUPTION	13
	11. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE	13
E.	CONTRACT GOVERNANCE	13
	12. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA	13
	13. CHANGE	15
F.	PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	16
	14. CONTRACT CHARGES AND PAYMENT.....	16
	15. PROMOTING TAX COMPLIANCE	18
G.	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS	19
	16. SUPPLIER PERSONNEL	19
	17. STAFF TRANSFER	20
	18. SUPPLY CHAIN RIGHTS AND PROTECTION	21
H.	PROPERTY MATTERS	25
	19. CUSTOMER PREMISES	25
	20. CUSTOMER PROPERTY	26
	21. SUPPLIER EQUIPMENT	26
I.	INTELLECTUAL PROPERTY AND INFORMATION	27
	22. INTELLECTUAL PROPERTY RIGHTS	27
	23. SECURITY AND PROTECTION OF INFORMATION	31
	24. PUBLICITY AND BRANDING	39
J.	LIABILITY AND INSURANCE	39
	25. LIABILITY	39
	26. INSURANCE	40

K.	REMEDIES AND RELIEF	41
	27. CUSTOMER REMEDIES FOR DEFAULT	41
	28. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE	43
	29. FORCE MAJEURE	44
L.	TERMINATION AND EXIT MANAGEMENT	46
	30. CUSTOMER TERMINATION RIGHTS	46
	31. SUPPLIER TERMINATION RIGHTS	48
	32. TERMINATION BY EITHER PARTY	48
	33. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION	48
	34. CONSEQUENCES OF EXPIRY OR TERMINATION	49
M.	MISCELLANEOUS AND GOVERNING LAW	50
	35. COMPLIANCE	50
	36. ASSIGNMENT AND NOVATION	51
	37. WAIVER AND CUMULATIVE REMEDIES	52
	38. RELATIONSHIP OF THE PARTIES	52
	39. PREVENTION OF FRAUD AND BRIBERY	52
	40. SEVERANCE	54
	41. FURTHER ASSURANCES	54
	42. ENTIRE AGREEMENT	54
	43. THIRD PARTY RIGHTS	54
	44. NOTICES	55
	45. DISPUTE RESOLUTION	56
	46. GOVERNING LAW AND JURISDICTION	56
	CONTRACT SCHEDULE 1: DEFINITIONS	57
	CONTRACT SCHEDULE 2: GOODS AND/OR SERVICES	77
	ANNEX 1: THE SERVICES	78
	ANNEX 2: THE GOODS	79
	ANNEX 3: SLA.	80
	CONTRACT SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING	83
	ANNEX 1: CONTRACT CHARGES	86
	ANNEX 2: PAYMENT TERMS/PROFILE	87
	CONTRACT SCHEDULE 4: SECURITY	88
	ANNEX 1: SECURITY MANAGEMENT PLAN	93
	CONTRACT SCHEDULE 5: STAFF TRANSFER	124
	ANNEX TO PART A: PENSIONS	
	ANNEX TO PART B: PENSIONS	
	ANNEX TO SCHEDULE 5: LIST OF NOTIFIED SUB-CONTRACTORS	137
	SCHEDULE 6: DISPUTE RESOLUTION PROCEDURE	138
	CONTRACT SCHEDULE 7: PROCESSING PERSONAL DATA AND DATA SUBJECTS.....	142
	CONTRACT SCHEDULE 8: JOINT CONTROLLER AGREEMENT	144

CONTRACT SCHEDULE 9: TRANSPARENCY REPORTS 145

CONTRACT SCHEDULE 10: EXIT MANAGEMENT 146

CONTRACT SCHEDULE 11: VARIATION FORM.....

CONTRACT SCHEDULE 12: ALTERNATIVE AND/OR ADDITIONAL CLAUSES 156

CONTRACT SCHEDULE 13: CONTRACT TENDER 178

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.
5. 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;

- 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;

- (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 SubContractor) 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 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 judgment 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 Clauses
- 7.3 a) to c),

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 SubContractors 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
 - 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 SubContractors 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
- (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 cooperation 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

- 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 judgment.

- 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.
- 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
 - (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 NonCompliance 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);
 - 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 SubContractor 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;
 - 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 SubContractors 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
- 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 SubContractors).

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 Clause18.7, the Supplier shall ensure that each Key SubContract 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 SubContract 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);
- (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 SubContract 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 SubContractor 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 nonpayment (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 nonexclusive 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.
- 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 machinereadable 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-license

- 22.8 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 22.4 (Licence granted by the Supplier: Project Specific IPR).
- 22.9 The Customer may sub-license:
 - (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:
 - (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 SubLicensee 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:
- (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 SubContractors 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:
- 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)
- 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.
- 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 9.
- 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.

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 Subprocessor;
 - (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:
- 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.
- 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 Subprocessor 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
 - 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 [REDACTED] (£[REDACTED]) 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

- 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:
- 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 NonPerformance.

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, SubContractor 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
 - 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), 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 34.4.

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 34.4 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
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, subcontractors 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:
- a) establish, maintain and enforce, and require that its SubContractors 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 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 43.1, a person who is not a Party to this Contract has no right under the CRTPA 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 43.1 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 42.3 shall invalidate the service of the related email 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 noncontractual) that arises out of or in connection with this Contract or its subject matter or formation.

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CONTRACT SCHEDULE 1: DEFINITIONS

1. In accordance with Clause **Error! Reference source not found.** (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: <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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> <p>i) base salary paid to the Supplier Personnel;</p> <p>ii) employer's national insurance contributions;</p> <p>iii) pension contributions; iv) car allowances;</p> <p>v) any other contractual employment benefits;</p> <p>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</p> <p>ix) reasonable recruitment costs, as agreed with the Customer;</p> <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>
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"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> <p>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;</p> <p>b) IPRs created by the Customer independently of this Contract ; and/or</p> <p>c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p>
"Customer Cause"	<p>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;</p>
"Customer Data"	<p>means:</p> <p>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:</p> <p>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</p> <p>b) any Personal Data for which the Customer is the Data Controller;</p>
"Customer Premises"	<p>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);</p>
"Customer Property"	<p>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 ;</p>
"Customer Representative"	<p>means the representative appointed by the Customer from time to time in relation to this Contract;</p>
"Customer Responsibilities"	<p>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 ;</p>
"Customer's Confidential Information"	<p>means:</p> <p>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);</p> <p>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;</p>

“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 <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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 SubContractor if such payment should have been made prior to the Service Transfer Date;

f) claims whether in tort, contract or statute or otherwise;

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;

"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"

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

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 ;

"Force Majeure Notice"

substitute third party is not reasonably available but excluding:

"Former Supplier"

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 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 iii) any failure of delay caused by a lack of funds;

"Fraud"

b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;

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;

c) acts of the Crown, local government or Regulatory Bodies;

d) fire, flood or any disaster; and

e) an industrial dispute affecting a third party for which a

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); 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 (*Regulation (EU) 2016/679*)

"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);

"Insolvency Event"

means, in respect of the Supplier or DMP Guarantor or Contract Guarantor (as applicable):

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

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

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

a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

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

it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

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

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

any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Installation Works"

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;

"Intellectual Property"

means

"Rights" or "IPR"	<p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade 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"	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;
"Joint Controllers"	means where two or more Controllers jointly determine the purposes and means of processing;
"Key Performance Indicators" or "KPIs"	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);
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"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"	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;
"Law"	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;
"LED"	means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);

"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"	means: <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> 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; 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. 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;
"Open Book Data"	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: <ul style="list-style-type: none"> 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; b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing: <ul style="list-style-type: none"> the unit costs and quantity of Goods and any other consumables and bought-in goods and/or services; 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; a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Suppliers Profit Margin; c) Overheads;

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

means any of the following:

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:

i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity;

b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

c) committing any offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or

iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or

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;

"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"

means:

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

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;

"Quality Standards"	means any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators); c) standards detailed by the Customer in the Contract Order Form or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time.
"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 subcontractor);
"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/securitypolicyDMP ;
"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; orb) 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/orc) 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/orb) 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"

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

Employees”

“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: GOODS AND/OR 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

1.1.2 Goods to be provided under this Contract, in Annex 2.

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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.

ANNEX 2: THE GOODS

1. The Supplier will provide the Goods as detailed in the Contract Order Form and / or as amended by special terms set out below in this annex 2.

ANNEX 3: SLA.

[REDACTED]

Information redacted under section 43 (2) of FOI Act 2000.

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 5.3 below)):
 - 5.2.1 contains:
 - (a) all appropriate references, including the unique order reference number set out in the Contract Order Form; and
 - (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.

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.
- 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 ;
- (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;
 - (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 noncompliance 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.

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Information redacted under section 43 (2) of FOI Act 2000.

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 subcontractor 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 subcontractor);
“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: <ul style="list-style-type: none"> (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.

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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 SubContractor 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 SubContractor.
- 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 parttime 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);
 - 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 SubContractor 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

- 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 disappplied 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:
- (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 SubContractor'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
 - 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 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

N/A

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
 - 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

- 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.
- 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:
- 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 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 shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: Bethany Richards
2. The contact details of the Processor's Data Protection Officer are: Mark Turner
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.

Description	Details
Identity of the Controller and Processor	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.
Subject matter of the processing	<div></div> <p>The addition of this apprenticeship will enhance HMRCs abilities to keep in step with IT advancements and reduce the needs to outsource work to third party companies at a cost to HMRC.</p> <p>Information redacted under section 43 (2) of FOI Act 2000.</p>
Duration of the processing	September 2022 for 5 years
Nature and purposes of the processing	Access will be needed to online learning portals and platforms as supplied by the supplier. Apprentices will be required to upload work, progress reports and assignments as well as accessing online learning tutorials, live lessons and online support webchat. Access will be via username and password. Personal data will not be held.
Type of Personal Data being Processed	The employee personal data will be provided to the supplier during the sign up process and will be stored on file for the duration of the Apprenticeship (4 years) Full names, PIDs, DOB, Gender, Home Postcode, NI, Personal and Work Email, Grade, Mobile number, Department, Location, Line manager's names, address, location, contact, Personal qualifications
Categories of Data Subject	The data collected is necessary for sign up to Apprenticeship programmes. There is no additional data collected which is not in accordance with BAU processes for recruitment and onboarding.

<p>Plan for return and destruction of the data once the processing is complete</p>	<p>Once the Apprenticeship is complete and the Apprentice has passed their End Point Assessment the expectation is that the supplier will delete or destroy all Apprentice data.</p>
<p>UNLESS requirement under union or member state law to preserve that type of data</p>	

CONTRACT SCHEDULE 8: JOINT CONTROLLER AGREEMENT

Not Used

CONTRACT SCHEDULE 9: TRANSPARENCY REPORTS

List of Transparency Reports

Title	Content	Format	Frequency
[Performance]	TBC	TBC	TBC
[Call off Contract Charges]	TBC	TBC	TBC
[Key Subcontractors]	TBC	TBC	TBC
[Technical]	TBC	TBC	TBC
[Performance management]	TBC	TBC	TBC

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 10.

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 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, SubContracts 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 10. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Contract Schedule 10. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this 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;
 - 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.
- 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
- 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
 - (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.
- 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

0.

CONTRACT SCHEDULE 12: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B. The Agreement incorporates the Authority's mandatory terms set out in this Schedule 12.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 12 will supersede any other terms in the Agreement.
- D. For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority's mandatory terms in this Schedule 12 are the definitions set out at Clause 1 of this Schedule 12.

1. Definitions

"Affiliate" in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Authority" (a) the data, text, drawings, diagrams, images or sounds (together **Data** with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Supplier by or on behalf of the Authority; and/or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;

"Charges" the charges for the Services as specified in the Contract Order Form.

"Connected Company" means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;

"Control" the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and
"Controls" and

"Controlled" shall be interpreted accordingly;
take the meaning given in the UK GDPR;

"Controller",

"Processor",

"Data Subject",

"Data" (a) "the data protection legislation" as defined in section 3(9) of the **Protection Data Protection Act 2018**; and;

Legislation”	(b) all applicable Law about the processing of personal data and privacy;
“Key Subcontractor”	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Personal Data”	has the meaning given in the UK GDPR;
“Purchase Order Number”	the Authority’s unique number relating to the supply of the Services;
“Services”	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
“Subcontract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Subcontractor”	any third party with whom: (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Supporting Documentation”	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
“Tax”	(a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;

- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax Non-Compliance” where an entity or person under consideration meets **“Compliance”** all 3 conditions contained in the relevant excerpt from

HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

“UK GDPR”

the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

“VAT”

value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in Clause 2 of Contract Schedule 3 of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

2.1.2 the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system.

2.3 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

3. Warranties

3.1 The Supplier represents and warrants that:

- 3.1.1** in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 3.1.2** it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
- 3.1.3** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause

3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

- 3.3** In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material

Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.

4.4 If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:

- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2** promptly provide to the Authority:
 - (a)** details of the steps which the Supplier is taking to resolve the 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 Tax Non-Compliance as the Authority may reasonably require.

- 4.5** The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

- 4.6** Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

4.7 If the Supplier:

- 4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
- 4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
- 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the CallOff Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

- 4.8 The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

- 5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3 In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4 Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and off-shoring

6.1 The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:

6.1.1 not process or permit to be processed Personal Data outside of the United Kingdom unless the prior explicit written consent of the Authority has been obtained and the following conditions are fulfilled:

- (a)** the Supplier or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;
- (b)** the Data Subject has enforceable rights and effective legal remedies;
- (c)** the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Supplier when it is the Controller in meeting its obligations); and
- (d)** the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

6.2 Failure by the Supplier to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

7.1 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.

7.2 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

7.3 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

7.4 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

7.5 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

Annex 1

Excerpt from HMRC's "Test for Tax Non-Compliance"

Condition one (An in-scope entity or person)

1. There is a person or entity which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*¹;
 - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
 - a. Fraudulent evasion²;
 - b. Conduct caught by the General Anti-Abuse Rule³;
 - c. Conduct caught by the Halifax Abuse principle⁴;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;

162 | INTERNAL

V5.5

162 | INTERNAL

V5.5

162 | INTERNAL

V5.5

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide

- e. Conduct caught by a recognised ‘anti-avoidance rule’¹⁰ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not affected for commercial purposes. ‘Targeted Anti-Avoidance Rules’ (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- f. Entered into an avoidance scheme identified by HMRC’s published Spotlights list¹¹;
- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X’s activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

- 1. In respect of (a), either X:
 - 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure¹²; or,
 - 2. Has been charged with an offence of fraudulent evasion.
- 2. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.

163 | INTERNAL

V5.5

163 | INTERNAL

V5.5

163 | INTERNAL

V5.5

prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

¹⁰ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

¹¹ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the

Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

¹² The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

3. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
4. In respect of (f) this condition is satisfied without any further steps being taken.
5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

Annex 2 Form CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: **SR16666321 – 16 September 2022** (‘the Agreement’)

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED: [REDACTED]
FULL NAME: [REDACTED]
POSITION: senior Sales Manager
COMPANY: QA Ltd
DATE OF SIGNATURE: 15 september 2022

E. PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority.
- E1.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date backups are stored off-site in accordance with the Provider's Business Continuity Plan. The Provider shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at mutually agreed intervals.
- E1.6 The Provider shall ensure that any system or media on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in the Annex to the Appendix (Security Requirements and Plan).
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may;
 - a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Provider shall do so as soon as practicable but not later than 5 working days; and/or;
 - b) itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.
- E1.9 The Provider, or any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Provider shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Where the Authority has given its prior written consent to the Provider to process, host or access Authority Data from premises outside the United Kingdom (in accordance with E1.9 of the Contract):

- a) the Provider must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
- b) the Provider shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption."

E1.11 Any breach by the Provider of this clause E1 shall be a material breach for the purposes of Termination on Default and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause (Termination on Default).

E2 Protection of Personal Data

- E2.1 The Contractor shall be registered under the DPA and both Parties will duly observe all of their obligations under the DPA, which arise in connection with this contract.
- E2.2 The Parties shall at all times comply with the DPA and all subordinate and related legislation as enacted from time to time. The Authority shall be a Data Controller of the Personal Data provided by the Authority, collected and held by the Contractor in performing the Services, and such Personal Data provided by the Authority, shall form part of the Authority's Data.
- E2.3 Notwithstanding the general obligation in clause E2.1, the Contractor shall:
 - a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract as otherwise notified by the Authority to the Contractor during the Contract Period);
 - b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - d) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
 - e) obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or agents for the provision of the Services;
 - f) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
 - g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - h) notify the Authority (within five Working Days) if it receives;
 - i) a request from a Data Subject to have access to that Person's Personal Data; or
 - ii) a complaint or request relating to the Authority's obligations under the DPA;

- i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by;
 - i) providing the Authority with full details of the complaint or request; ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv) providing the Authority with any information requested by the Authority;
- j) permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- k) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- l) not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii) any reasonable instructions notified to it by the Authority.

E2.4 The Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor (or any Sub-contractor) of this Clause E2.

E2.5 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E3 Official Secrets Acts and related legislation

E3.1 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of;

- a) the Official Secrets Acts 1911 to 1989;
- b) Section 182 of the Finance Act 1989; and
- c) Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

E3.2 In the event that the Provider or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract with immediate effect.

E4 Confidential Information

- E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- E4.2 Clause E4 shall not apply to the extent that;
- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
 - b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - c) such information was obtained from a third party without obligation of confidentiality;
 - d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - e) it is independently developed without access to the other Party's Confidential Information.
- E4.3 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.4 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.5 Where deemed appropriate by the Client, and at the written request of the Client, the Contractor shall procure that its Staff sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.

- E4.6 Nothing in this Contract shall prevent the Authority from disclosing the Provider's Confidential Information:
- a) to any government department or any other Contracting Body. All government departments or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body;
 - b) to any consultant, provider or other person engaged by the Authority to conduct a Cabinet Office gateway review;
 - c) for the purpose of the examination and certification of the Authority's accounts; or
 - d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or knowhow gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E4.9 In the event that the Provider fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E4.12 Notwithstanding any other term of this Contract, the Provider hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E5 Freedom of Information

- E5.1 Each party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the other Party to enable the other Party to comply with its Information disclosure obligations.

- E5.2 Each Party ("First Party") shall and shall procure that its Sub-contractors shall;
- a) transfer to the other Party all Requests for Information (in relation to all Information that the First Party is holding on behalf of that other Party) receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as the other Party may specify) of the other Party's request; and
 - c) provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- E5.3 Each Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E5.4 In no event shall either Party respond directly to a Request for Information in relation to all Information that it is holding on behalf of the other Party unless expressly authorised to do so by the other Party.
- E5.5 Each Party ("First Party") acknowledges that (notwithstanding the provisions of clause E5) the other Party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the First Party or the Services;
- a) in certain circumstances without consulting the First Party; or
 - b) following consultation with the First Party and having taken their views into account;
- provided always that where E5.5 (a) applies the other Party shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the First Party advanced notice, or failing that, to draw the disclosure to the First Party's attention after any such disclosure.
- E5.6 Each Party shall ensure that all Information that it is holding on behalf of the other Party is retained for disclosure and shall permit the other Party to inspect such records as requested from time to time.
- E5.7 Each Party acknowledges that the list provided by it of Commercially Sensitive Information set out in the Commercially Sensitive Information Appendix is of indicative value only and that the other Party may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

- E6.1 The Provider shall not:

- a) make any press announcements or publicise this Contract or its contents in any way; or
- b) use the Authority's name or brand in any promotion or marketing or announcement of orders; without the written consent of the Authority, which shall not be unreasonably withheld or delayed.

- E6.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Subcontractors, providers, professional advisors and consultants comply with clause E6.1.
- E6.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Provider's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Provider or its Sub-contractors.
- E6.4 If so requested by the Authority the notepaper and other written material of the Provider and its Subcontractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) ("Trade Mark") from time to time. All publicity and marketing material produced by the Provider (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.]

E7 Security

- E7.1 The Provider shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Provider in the performance of the Services.
- E7.2 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises. The Authority shall provide copies of its written security procedures to the Provider on request and shall afford the Provider upon request with an opportunity to inspect its physical security arrangements.
- E7.3 The Provider shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan. The Provider shall ensure that the Security Plan fully complies with the Security Policy].
- E7.4 The Authority shall notify the Provider of any changes or proposed changes to the Security Policy.
- E7.5 If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services, it may request a Variation to the Contract by written notice to the Authority. In doing so, the Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with clause (Variation).
- E7.6 Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to clause E7.5 the Provider shall continue to perform the Services in accordance with its existing obligations.

E8 Intellectual Property Rights

E8.1 Subject to the licences granted under E8.1.1 and E8.1.2 below and any other provision of the Contract granting any right, title or interest, neither the Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Provider acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data subject to the licence granted under E8.1.1 below:

E8.1.1 The Authority shall grant the Provider a non-exclusive, revocable, no-cost licence to use the Intellectual Property Rights of the Authority which are referred to in Clause E8.2 below:

- a) during the Contract Period where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub license the Sub-Contractor's use of those Intellectual Property Rights. At the end of the Contract Period the Provider shall cease use, and shall procure that any Sub-Contractor ceases use, of those Intellectual Property Rights; and
- b) during the Contract Period and thereafter for the purpose of education and research without the right to sub license.

E8.1.2 The Provider shall grant the Authority a non-exclusive, irrevocable, no-cost licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Provider's Intellectual Property Rights.

E8.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, know-how, or other material (including Authority Data):

- a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; or
- b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Authority;

and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.

E8.3 The Provider shall obtain approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third-party Intellectual Property Rights. The Provider shall ensure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be nonexclusive, perpetual, royalty-free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Bodies, the Replacement Provider or to any other third-party supplying services to the Authority.

- E8.4 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from;
- a) items or materials based upon designs supplied by the Authority; or
 - b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Contract.
- E8.5 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:
- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - b) shall take due and proper account of the interests of the Authority; and
 - c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- E8.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Provider's obligations under the Contract and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.4 (a) or (b).
- E8.7 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Provider in connection with the performance of its obligations under the Contract.
- E8.8 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- a)
modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;
- and in the event that the Provider is unable to comply with clauses E8.8 (a) or (b) within twenty (20) Working Days of receipt of the Provider's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E8.9 Without prejudice to the Authority's ownership of everything relating to information and data emerging from the supply of the Services (including the provisions of E2.2), the Provider shall ensure that all basic factual data is anonymised as and when it is received and that the key to personal identities involved in the supply of the Services is kept in a separate and secure place.

E8.10 On the expiry or termination of this contract, the key to the identities of all persons involved in the supply of the Services (anonymised as above) and all Personal Data no longer required shall be destroyed by the Provider unless the Authority directs otherwise.

E8.11 The Copyright in all materials, data (including all basic factual data, sometimes referred to as "raw data" and the Results) prepared as part of, incidental to or resulting from the Service activity, shall vest from the outset in the Authority.

E9 LICENCES TO USE SOFTWARE

E9.1 The Authority hereby grants to the Provider a non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) any Authority Software which is provided by the Authority to the Provider during the Contract Period, but only to the extent that such use, reproduction, modification, adaptation and enhancement is necessary for the performance of the Services and not otherwise and also provided that the Intellectual Property Rights in any Authority Software modified, adapted or enhanced as a result shall be assigned to the Authority. Such licence is granted on the basis that no warranty or representation is given by the Authority that the Authority Software will be uninterrupted or error free or that it will meet any specification or capability or that its functions will be fit for the purposes required by the Provider. Such licence shall terminate automatically without notice from the Authority upon the expiry or termination of this Contract. In such circumstances the Provider shall either return or destroy (at the direction of the Authority) all copies of the Authority Software which it then holds and shall certify to the Authority that such return or destruction (as the case may be) has occurred.

E9.2 In consideration of the payment of the Charges, the Provider hereby grants to the Authority an irrevocable, royalty free, non-exclusive licence to use the Contractor's Software insofar as such use is necessary or incidental to the Authority receiving the full benefit of the Services.

E9.3 All Intellectual Property Rights in any Specially Written Software, which is produced by the Provider or by or together with others (including Sub-Contractors) at the Provider's request or on its behalf as part of the Services shall be owned by the Authority. Before the Specially Written Software becomes part of the Services, the Provider shall assign to the Authority, or shall procure that the owner of the Intellectual Property Rights in such Specially Written Software shall forthwith assign to the Authority, all Intellectual Property Rights in such Specially Written Software. Subject to such assignment, the Authority hereby grants to the Provider a royalty-free, non-transferable, non-exclusive licence (revocable by written notice from the Authority) to use such Intellectual Property Rights in such Specially Written Software for the exclusive purpose of providing the Services to the Authority. The Provider shall do all such reasonable acts (including providing the Authority with the latest version of the Source Code of any Specially Written Software) and execute all such documents as may be reasonably necessary or desirable to secure the vesting in the Authority of all Intellectual Property Rights in the Specially Written Software.

E10 PUBLICATION OF RESEARCH

E10.1 Publication will always be subject to the approval of the Authority and publication of material in connection with the Project is controlled under Clause E11 and this Clause E10 of this Contract. This approval will not unreasonably be withheld.

E10.2 In limited circumstances and with the prior written permission of the Authority's Representative the Provider will be able to conduct complementary research. The Provider accepts that the Authority will not permit extensive research with participants and any

research activity undertaken by the Provider will not overburden the participants. The Provider also agrees that the Authority's evaluation of the Project will take priority over the Provider's research.

E10.3 Before the Commencement Date, the Provider shall provide a research plan to the Authority's Representative. The research plan will contain complete information in respect of the research activity, which the Provider proposes to undertake during the Contract.

E10.4 The Provider agrees it will not Publish (and shall ensure that sub-contractors do not publish) the Results, the Works or any other material connected with the Project without first seeking the approval of the Authority in accordance with the procedure set out in Clause E11; and below.

E10.5 The Provider further agrees that it will not Publish without the Authority's approval any research papers, articles, publications or reports in respect of the Project before the end of the Contract Period or before the Authority has published its full and complete research findings.

E10.6 Any questions or forms which the Provider proposes to use for its own research purposes shall be submitted in draft to the Authority's Representative, together with any explanatory notes, covering letters to respondents and any other relevant documentation. Those particulars and any other particulars contained within the surveys when carried out may be forwarded by the Authority to the Survey Control Unit of the Central Statistical Office.

E10.7 Acknowledgement of Crown Copyright shall be made in any publication unless the Authority agrees otherwise. Acknowledgement shall be in the form of "© Crown Copyright Reserved 20XX (year of first publication). Published by permission of the Controller of Her Majesty's Stationery Office".

E10.8 Every Publication shall acknowledge the Authority's assistance or carry such disclaimer as the Authority may require (or both) or otherwise as may be directed by the Authority.

E11 PRESENTATIONS AND SEMINARS

E11.1 The Provider hereby agrees that any materials including seminar notes, delegate seminar notes, training materials; videos; training course containing any information in respect of the Project shall be the property of the Authority who reserves the right to determine whether any patent or like protection should be applied for, where appropriate, and they shall take any necessary steps to assign such rights to the Authority, in accordance with the provision of Clause E8.

E11.2 The Provider acknowledges that this Project/Service/Research Commission is of a sensitive nature as this will entail dealing with confidential data relating to the Department's customers and members of the public, and that the Authority as the owner of any Results, materials and/or Works concerning the Project has a legitimate interest in controlling their Publication. The Authority acknowledges that the Provider, as a leading social research organisation has an interest in presenting the work that it does.

E11.3 During the period of the contract and prior to Publication, the Provider shall not

Publish, (and shall ensure that the Providers sub-contractors do not Publish) the Results, the Works, or any other Material connected with the Project without first seeking the approval of the Authority in accordance with the procedure set out in this Clause E11 and below.

E11.4 To allow the Authority time to review any proposed presentation/seminar notes/Publication the Provider shall, or shall procure that the relevant Sub-Contractor shall, provide to the Authority:

- (a) a copy of any manuscript (or other electronic media form) of the proposed presentation/seminar/Publication; and

- (b) a copy of any slides or other materials, which are intended to be distributed to an audience of any oral presentation

E11.5 In both cases such material to be given to the Authority at least 28 days prior to the proposed Publication wherever possible. In the case of any unplanned or short notice presentations the Provider must inform the Authority at the earliest opportunity and the Authority will endeavour to try to clear the proposed presentation as soon as is reasonably practicable. For the avoidance of doubt the Authority will endeavour to clear short notice presentation materials within 24 hours.

E12 Audit and the National Audit Office

E12.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

E12.2 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under Section 6(3) (d) and (5) of the National Audit Act 1983.

E13 Malicious Software

E13.1 The Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E13.2 Notwithstanding clause E13.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E13.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E13.2 shall be borne by the Parties as follows:

- a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and
- b) by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

CONTRACT SCHEDULE 13: CONTRACT TENDER



Information redacted under section 43 (2) of FOI Act 2000.