

Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	Buyer	The Department for Education (the Buyer). Its offices are on: Sanctuary Buildings Great Smith St, London, EC1V
2.	Supplier	Name: Coram Trading Limited (Trading as Coram-i) Address: Coram Campus 41 Brunswick Square London WC1N 1AZ Registration number: 07034159 SID4GOV ID: NA
3.	Contract	This Contract between the Buyer and the Supplier is for the supply of Deliverables.
4.	Contract reference	con_13076
5.	Deliverables	The running of a secretariat and the collection and publication of a quarterly adoption statistical release for the Adoption and Special Guardianship Leadership Board (ASGLB) and its Chair. See Schedule 2 (Specification) for further details.
6.	Start Date	1/04/2022
7.	End Date	31/03/2024
8.	Extension Period	2 optional 1 year extensions. Up to 31/03/2026
9.	Incorporated Terms (together these documents form the 'the Contract')	The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies: <ol style="list-style-type: none"> 1. This Award Form 2. Core Terms (version 1.0) 3. Schedule 1 (Definitions) 4. Schedule 20 (Processing Data)

		<p>5. The following Schedules (in equal order of precedence):</p> <ul style="list-style-type: none"> • Schedule 2 (Specification) • Schedule 3 (Charges) • Schedule 5 (Commercially Sensitive Information) • Schedule 7 (Staff Transfer) • Schedule 8 (Implementation Plan & Testing) • Schedule 10 (Service Levels) • Schedule 11 (Continuous Improvement) • Schedule 13 (Contract Management) • Schedule 14 (Business Continuity and Disaster Recovery) • Schedule 16 (Security) • Schedule 18 (Supply Chain Visibility) • Schedule 19 (Cyber Essentials Scheme) • Schedule 20 (Processing Data) • Schedule 21 (Variation Form) • Schedule 22 (Insurance Requirements) • Schedule 24 (Financial Difficulties) • Schedule 25 (Rectification Plan) • Schedule 27 (Key Subcontractors) • Schedule 28 (ICT Services) • Schedule 29 (Key Supplier Staff) • Schedule 30 (Exit Management) • Schedule 32 (Background Checks) <p>6. Schedule 26 (Corporate Social Responsibility)</p> <p>7. Schedule 4 (Tender) as long as any part of the Tender that offers a better commercial position for the Buyer takes precedence over the documents above</p>
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10.	Special Terms	NA
11.	Buyer's Environmental Policy	<p>How we plan and manage sustainable operations</p> <p>We display our sustainable operations policy statement (PDF, 342KB, 1 page) in our buildings' reception areas and online. To manage our environmental impact, we use an environmental management system (PDF, 96.3KB, 2 pages) which is modelled on ISO14001:2004.</p> <p>All our plans and targets are aligned to the Greening government commitment targets. We also focus on wider and longer-term targets, including from the:</p> <ul style="list-style-type: none"> • Energy Efficiency Directive articles 5 and 6: targets for 2020 • Kyoto Protocol Agreement • Climate Change Act <p>More detail on sustainability is available in the consolidated annual report and accounts.</p> <p>Available online at Our energy use - Department for Education - GOV.UK (www.gov.uk)</p>
12.	Buyer's Security Policy	Please see Schedule 16
13.	Social Value Commitment	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with the social value commitments in Document 3.
14.	Commercially Sensitive Information	Supplier's Commercially Sensitive Information: Schedule 5
15.	Charges	Details in Schedule 3 (Charges) of the terms and conditions
16.	Reimbursable expenses	None
17.	Payment method	Details in Schedule 3 (Charges) of the terms and conditions
18.	Service Levels	Service Credits will accrue in accordance with Schedule 10 (Service Levels)
19.	Insurance	Details in Annex of Schedule 22 (Insurance Requirements).

20.	Liability	In accordance with Clause 11.1 of the Core Terms each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than £5 million
21.	Cyber Essentials Certification	Cyber Essentials Scheme Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)]
22.	Progress Meetings and Progress Reports	See Schedule 13 of the terms and conditions.
23.	Guarantee	Not applicable
24.	Supplier Contract Manager	REDACTED
25.	Supplier Authorised Representative	REDACTED
26.	Supplier Compliance Officer	REDACTED
27.	Supplier Data Protection Officer	REDACTED
28.	Supplier Marketing Contact	REDACTED
29.	Key Subcontractors	REDACTED

30.	Buyer Authorised Representa tive	REDACTED
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REDACTED

Core Terms – Mid-tier

1. Definitions used in the contract

1.1 Interpret this Contract using Schedule 1 (Definitions).

2. How the contract works

2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form). If allowed by the Regulations, the Buyer can:

- make changes to Award Form
- create new Schedules
- exclude optional template Schedules
- use Special Terms in the Award Form to add or change terms

2.2 The Contract:

- is between the Supplier and the Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Award Form

2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.4 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

2.5 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

2.6 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

- that comply with the Specification, the Tender Response and the Contract
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
- on the dates agreed
- that comply with Law

3.1.2 In the event that a level of warranty is not specified in the Award Form, the Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

3.2 Goods clauses

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.

3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If

the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

3.3 Services clauses

3.3.1 Late Delivery of the Services will be a Default of the Contract.

3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

4 Pricing and payments

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.

4.2 All Charges:

- exclude VAT, which is payable on provision of a valid VAT invoice
- include all costs connected with the Supply of Deliverables

4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.

4.4 A Supplier invoice is only valid if it:

- includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer
- includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)

4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

4.7 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
- enter into a direct agreement with the Subcontractor or third party for the relevant item

4.8 If the Buyer uses Clause 4.7 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

4.9 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables
- any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges

4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5. The buyer's obligations to the supplier

5.1 If Supplier Non-Performance arises from a Buyer Cause:

- the Buyer cannot terminate the Contract under Clause 10.4.1
- the Supplier is entitled to reasonable and proven additional expenses and to

relief from Delay Payments, liability and Deduction under this Contract

- the Supplier is entitled to additional time needed to make the Delivery
- the Supplier cannot suspend the ongoing supply of Deliverables

5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware
- demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause
- mitigated the impact of the Buyer Cause

6. Record keeping and reporting

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract for 7 years after the End Date and in accordance with the GDPR.

6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- tell the Buyer and give reasons
- propose corrective action
- provide a deadline for completing the corrective action

7. Supplier staff

7.1 The Supplier Staff involved in the performance of the Contract must:

- be appropriately trained and qualified
- be vetted using Good Industry Practice and the Security Policy
- comply with all conduct requirements when on the Buyer's Premises

7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

8. Rights and protection

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform the Contract
- the Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract
- it is not impacted by an Insolvency Event

8.2 The warranties and representations in Clauses 2.6 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies the Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

9. Intellectual Property Rights (IPRs)

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier

9.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables

10. Ending the contract

10.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

10.3 Ending the contract without a reason

10.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier at least 90 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

10.4 When the Buyer can end the Contract

10.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:

- there's a Supplier Insolvency Event
- there's a Default that is not corrected in line with an accepted Rectification Plan
- the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material Default of the Contract
- there's any material Default of any Joint Controller Agreement relating to the Contract
- there's a Default of Clauses 2.6, 9, 14, 15, 27, 32 or Schedule 19 (Cyber Essentials) (where applicable) relating to the Contract
- there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels)
- there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing
- there's a Variation to the Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- The Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them

10.4.2 If there is a Default, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.3 When the Buyer receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the

Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.4 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

- must give reasonable grounds for its decision
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.5 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

10.5 What happens if the contract ends

Where the Buyer terminates the Contract under Clause 10.4.1 all of the following apply:

10.5.1 The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.5.2 The Buyer's payment obligations under the terminated Contract stop immediately.

10.5.3 Accumulated rights of the Parties are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.5.5 The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

10.5.6 The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

10.6 When the supplier can end the contract

10.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 30 days of the date of the Reminder Notice.

10.6.2 If a Supplier terminates the Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum

payable to the Supplier if the Contract had not been terminated

- Clauses 10.5.4 to 10.5.7 apply

10.7 When subcontracts can be ended

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer

10.8 Partially ending and suspending the contract

10.8.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.

10.8.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.8.3 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

11. How much you can be held responsible for

11.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Award Form.

11.2 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.3 In spite of Clause 11.1, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law

11.4 In spite of Clause 11.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8 or Schedule 7 (Staff Transfer) of the Contract.

11.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.

11.6 When calculating the Supplier's liability under Clause 11.1 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.4

11.7 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

12. Obeying the law

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Schedule 26 (Corporate Social Responsibility).

12.2 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

13. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

14. Data protection

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:

- tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier
- restore the Government Data itself or using a third party

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless the Buyer is at fault.

14.8 The Supplier:

- must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it
- indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

15. What you must keep confidential

15.1 Each Party must:

- keep all Confidential Information it receives confidential and secure
- not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract
- immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

15.4 The Buyer may disclose Confidential Information in any of the following cases:

- on a confidential basis to the employees, agents, consultants and contractors of the Buyer
- on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to

- if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information and any Information which is exempt from disclosure by Clause 16 is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request
- comply with any Environmental Information Regulations (EIR) request

16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

17. Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

18. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

19. Other people's rights in the Contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

20. Circumstances beyond your control

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

- provides a Force Majeure Notice to the other Party
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

20.2 Either party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses
- Clause 10.5.2 to 10.5.7 applies

21. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

22. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

23. Transferring responsibilities

23.1 The Supplier cannot assign the Contract without the Buyer's written consent.

23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

23.3 When the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

23.4 The Supplier can terminate the Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- their name
- the scope of their appointment
- the duration of their appointment

24. Changing the contract

24.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties

24.2 The Supplier must provide an Impact Assessment either:

- with the Variation Form, where the Supplier requests the Variation
- within the time limits included in a Variation Form requested by the Buyer

24.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:

- agree that the Contract continues without the Variation
- terminate the affected Contract, unless the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
- refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

24.4 The Buyer is not required to accept a Variation request made by the Supplier.

24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.

24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs
- of how it has affected the Supplier's costs

24.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

25. How to communicate about the contract

25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

25.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.

25.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
- the amount the Indemnifier paid the Beneficiary for the Claim

27. Preventing fraud, bribery and corruption

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
- keep full records to show it has complied with its obligations under Clause 27 and give copies to the Buyer on request
- if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to the Contract
- suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

28. Equality, diversity and human rights

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which the Buyer reasonably imposes related to equality Law

28.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

29. Health and safety

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.2 The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

30. Environment

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

31. Tax

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest

or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer
- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

32. Conflict of interest

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.

32.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

33. Reporting a breach of the contract

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

34. Resolving disputes

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Buyer refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute
- grant interim remedies
- grant any other provisional or protective relief

34.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be

finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

35. Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.

Schedule 1 (Definitions)

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
 - 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
 - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.

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1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and

1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.

1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Achieve"	in respect of a Test, to successfully pass such Test without any Test Issues 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;
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Annex"	extra information which supports a Schedule;
"Approval"	the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly;
"Audit"	<p>the Buyer's right to:</p> <ul style="list-style-type: none">a) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;c) verify the Open Book Data;d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Schedule 26 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer 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, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;g) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

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	<p>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</p> <p>i) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;</p> <p>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 Buyer has used its resources.</p>
"Auditor"	<p>a) the Buyer's internal and external auditors;</p> <p>b) the Buyer's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"BACS"	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Buyer Assets"	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);

"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the Contract Period in respect of the Contract;
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in the Award 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 Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and 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;

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"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract to be entered into between the Buyer and the Supplier for the provision of the Deliverables;
"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities and contract data;
"Contract Period"	the term of the Contract from the earlier of the: a) applicable Start Date; or b) the Effective Date until the applicable End Date;
"Contract Value"	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	has the meaning given to it in the GDPR;
"Core Terms"	the Buyer's standard terms and conditions for common goods and services which comprise one part of the Contract the full title of which is Core Terms – Mid-tier version 1.0;
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and

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	<p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) costs incurred in respect of Supplier Assets 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 Buyer 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 Deliverables; and</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>f) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 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;

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"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR
"Data Subject Access Request"	a 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"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
"Delay Payments"	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;
"Delivery"	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. " Deliver " and " Delivered " shall be construed accordingly;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the " Disaster Period ");
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
"Dispute"	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 34 (Resolving disputes);

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"Documentation"	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <p>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>c) has been or shall be generated for the purpose of providing the Deliverables;</p>
"DOTAS"	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;</p>
"Due Diligence Information"	<p>any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;</p>
"Effective Date"	<p>the date on which the final Party has signed the Contract;</p>
"EIR"	<p>the Environmental Information Regulations 2004;</p>
"Employment Regulations"	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;</p>
"End Date"	<p>the earlier of:</p> <p>a) the Expiry Date (as extended by any Extension Period exercised by the Buyer under Clause 10.2); or</p> <p>b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>
"Environmental Policy"	<p>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 Buyer;</p>

"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	<p>means for the purposes of calculating each Party's annual liability under clause 11.2 :</p> <p>i) in the first Contract Year, the Estimated Year 1 Charges; or</p> <p>ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</p> <p>iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</p>
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Expiry Date"	the date of the end of the Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended up to a maximum of the number of years in total specified in the Award Form;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <p>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 a Contract;</p> <p>a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>b) acts of a Crown Body, local government or regulatory bodies;</p> <p>c) fire, flood or any disaster; or</p>

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	<p>d) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <ul style="list-style-type: none">i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;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; andiii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Award Form"	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;
"Incorporated Terms"	the contractual terms applicable to the Contract specified in the Award Form;
"Special Terms"	any additional terms and conditions specified in the Award Form incorporated into the Contract;
"Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"General Anti-Abuse Rule"	<ul style="list-style-type: none">a) the legislation in Part 5 of the Finance Act 2013 and; andb) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other

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	bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Data"	<p>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 of the Buyer's Confidential Information, and which:</p> <ul style="list-style-type: none">i) are supplied to the Supplier by or on behalf of the Buyer; orii) the Supplier is required to generate, process, store or transmit pursuant to the Contract;
"Government Procurement Card"	<p>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;</p>
"Guarantor"	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	Her Majesty's Revenue and Customs;
"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none">a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;b) details of the cost of implementing the proposed Variation;c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;d) a timetable for the implementation, together with any proposals for the testing of the Variation; ande) such other information as the Buyer may reasonably request in (or in response to) the Variation request;

"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Independent Control"	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and "Independent Controller" shall be construed accordingly;
"Indexation"	the adjustment of an amount or sum in accordance with the Award Form;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of the Contract specified in the Award Form;
"Insolvency Event"	<ul style="list-style-type: none"> a) in respect of a person: b) 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 c) 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 d) 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 e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or f) 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 g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or h) 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

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	<p>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
"Installation Works"	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;
"Intellectual Property 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, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Invoicing Address"	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
"IR35"	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/ir35-find-out-if-it-applies ;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (<i>Processing Data</i>);
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of Processing;
"Key Personnel"	the individuals (if any) identified as such in the Award Form;
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>any Subcontractor:</p> <p>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</p>

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	<p>b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</p> <p>c) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract, and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
"Law"	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 with which the Supplier is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Losses"	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;
"Lots"	the number of lots specified in Schedule 2 (Specification), if applicable;
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"New IPR"	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p>

	but shall not include the Supplier's Existing IPR;
"Occasion of Tax Non – Compliance"	<p>where:</p> <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 the DOTAS or any equivalent or similar regime in any jurisdiction; and/or 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 Start Date or to a civil penalty for fraud or evasion;
"Open Book Data"	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Supplier's 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 Deliverables; b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables; ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade; iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and iv) Reimbursable Expenses, if allowed under the Award Form; c) Overheads; d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;

	<p>e) the Supplier Profit achieved over the Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period;</p>
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor'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 Staff and accordingly included within limb (a) of the definition of "Costs";
"Parliament"	takes its natural meaning as interpreted within by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Meeting Frequency"	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Award Form;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Progress Report Frequency"	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Award Form;
"Prohibited Acts"	a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:

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	<ul style="list-style-type: none">i) induce that person to perform improperly a relevant function or activity; orii) 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 the Contract; orc) committing any offence:<ul style="list-style-type: none">i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); orii) under legislation or common law concerning fraudulent acts; oriii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; ord) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Protective Measures"	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none">a) the nature of the data to be protectedb) harm that might result from Data Loss Event;c) state of technological developmentd) the cost of implementing any measures <p>including but not limited to 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;</p>
"Recall"	<p>a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;</p>
"Recipient Party"	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify it's breach using the template in Schedule 25 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none">a) full details of the Default that has occurred, including a root cause analysis;

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	<p>b) the actual or anticipated effect of the Default; and</p> <p>c) 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);</p>
"Rectification Plan Process"	the process set out in Clause 10.4.2 to 10.4.4 (Rectification Plan Process);
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
"Reimbursable Expenses"	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <p>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
"the Buyer's Confidential Information"	<p>c) 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 Buyer (including all Buyer Existing IPR and New IPR);</p> <p>d) 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 Buyer's attention or into the Buyer's possession in connection with the Contract; and</p> <p>information derived from any of the above;</p>
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	a notice sent in accordance with Clause 10.6 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of

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	the Deliverables , whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Subcontractor"	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
"Replacement Supplier"	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Insurances"	the insurances required by Schedule 22 (Insurance Requirements);
"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Levels"	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Service Transfer"	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
"Service Transfer Date"	the date of a Service Transfer;

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"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Special Terms"	any additional Clauses set out in the Award Form which shall form part of the respective Contract;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
"Specification"	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
"Standards"	any: 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 Schedule 2 (Specification); c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time;
"Start Date"	the date specified on the Award Form;
"Storage Media"	the part of any device that is capable of storing and retrieving data;

"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than a Contract, pursuant to which a third party: a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier's Confidential Information"	a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing 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 Supplier's attention or into the Supplier's possession in connection with the Contract; c) Information derived from any of (a) and (b) above;
"Supplier's Contract Manager"	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supplier Equipment"	the Supplier's 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 Buyer) in the performance of its obligations under this Contract;
"Supplier Non-Performance"	where the Supplier has failed to: a) Achieve a Milestone by its Milestone Date; b) provide the Goods and/or Services in accordance with the Service Levels ; and/or c) comply with an obligation under the Contract;

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"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 Supply Chain Visibility;
"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
"Test Plan"	a plan: a) for the Testing of the Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;

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"Transparency Information"	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for – (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (ii) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"Variation"	has the meaning given to it in Clause 24 (Changing the contract);
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 24 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Worker"	any one of the Supplier Staff which the Buyer, 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) applies in respect of the Deliverables; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

Schedule 2 (Specification)

REDACTED

Schedule 3 (Charges)

1. How Charges are calculated

1.1 The Charges:

1.1.1 shall be calculated in accordance with the terms of this Schedule;

1.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and]

1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

2. The pricing mechanisms

2.1 The pricing mechanisms and prices set out in Annex 1 shall be available for use in calculation of Charges in the Contract.

3. Are costs and expenses included in the Charges

3.1 Except as expressly set out in Paragraph 4 below, or otherwise stated in the Award Form the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

3.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

3.1.2 costs incurred prior to the commencement of the Contract.

4. When the Supplier can ask to change the Charges

4.1 The Charges will be fixed for the first **2** years following the Contract Commencement Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").

4.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.

4.3 Any notice requesting an increase shall include:

4.3.1 a list of the Charges to be reviewed;

4.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:

Schedule 3 (Charges)

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- (a) a breakdown of the profit and cost components that comprise the relevant part of the Charges;
- (b) details of the movement in the different identified cost components of the relevant Charge;
- (c) reasons for the movement in the different identified cost components of the relevant Charge;
- (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
- (e) evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date.

4.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.

4.5 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly.

5. Other events that allow the Supplier to change the Charges

5.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:

- 5.1.1 a Specific Change in Law in accordance with Clause 24;
- 5.1.2 a review in accordance with insurance requirements in Clause 13;
- 5.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges; and

Annex 1: Rates and Prices

REDACTED

Schedule 4 (Tender)

The Contractors response to the technical questions is below:

TECHNICAL QUESTIONNAIRE

Invitation to Tender (ITT)

(Open Procedure)

ADOPTION AND SPECIAL GUARDIANSHIP LEADERSHIP BOARD SECRETARIAT AND ADOPTION DATA COLLECTION

Schedule 4 (Tender)

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ITT Information (for bidder guidance & information)

Introduction and background

The Department for Education reserves the right to request appropriate independent or objective evidence to support supplier responses/statements. Please note that any false statements or information given that is subsequently found to be untrue will automatically disqualify your application and any ensuing contract award.

Responses **should not exceed** the word count limit for that particular question or include any embedded / attached documents unless specifically requested. In the event that a response exceeds the word count limit stated for that particular question then all content that follows the maximum word count will be disregarded and will not be evaluated. How Bidders choose to utilise the available word count across the theme is left to their own discretion. Diagrams are acceptable, and will not be included as part of the word count.

Attachments: Please ONLY insert attachments where requested to do so. Please only attach documents to the questions as specified. If you insert an attachment to a question that requires a text response, please note your response to the question will **NOT** be marked.

Instructions

Bidders should complete the questions set out within this document.

Quality Award Criteria

Bidders are reminded of the Award Criteria which is summarised below detailed within the Document 1 - ITT Document.

Technical	Q1: A1: Running an efficient and flexible secretariat service	20.00%
Technical	Q2: Collecting, analysing and managing complex data, including a quarterly data collection and publication	20.00%
Technical	Q3: Event management, policy development and research	10.00%
Technical	Q4: Project and risk management	10.00%
Social Value	Social Value	10.00%
QUALITY TOTAL		70.00%

ITT Submission (for bidder completion)

No.	Question
Q1	<p>Running an efficient and flexible secretariat service</p> <ul style="list-style-type: none"> Please set out how you will develop and run a secretariat service that fulfils the requirements outlined in Document 2 – Service Specification. <p>Please include in your response how you will:</p> <ul style="list-style-type: none"> Support quarterly ASGLB Board meetings through the organisation of meetings, preparation of agendas and appropriate papers, taking notes and following up on actions. Support the regular sub-groups and task groups that convene ahead of each ASGLB meeting. Support the Chair with other duties including meetings with Minister, preparing materials for seminars and regional meetings, diary management, travel bookings and the drafting of letters and papers, where linked with ASGLB work. <p>(Maximum Word Limit 800 words) <i>This question is worth 20% of the total tender</i> (800 words)</p>
	REDACTED
Q2	<p>Collecting, analysing and managing complex data, including a quarterly data collection and publication</p> <ul style="list-style-type: none"> Please set out how you will manage the data collection and analysis needs of the ASGLB to fulfil the requirements outlined in attachment 3 – service specification. <p>Please include in your response how you will:</p> <ul style="list-style-type: none"> Collect adoption data from all adoption agencies (local authority and voluntary) for quarterly publication, and how data will be internally cleansed, verified with agencies and then published within three months of the quarter ending. Prepare data packs for discussion at the quarterly meetings – both the ASGLB and the Regional Boards – including analysis of latest trends to make best use of board members’ time. Collect data from local authorities on child arrangement and special guardianship orders for children that were previously looked after to provide the ASGLB and Regional Boards with a better understanding of all permanence orders Manage requests for additional data analysis from the RAA leaders’ group to support their work on recruitment and early permanence.

Schedule 4 (Tender)

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(Maximum Word Limit 1000 words)

This question is worth 20% of the total tender

(991 words)

Q2 Response

REDACTED

Q3 Event management, policy development and research

- Please set out how you will manage a service that can respond to the changing needs and priorities of the ASGLB in terms of managing events and facilitating policy work through research and reports to fulfil the requirements outlined in Document 2 – Service Specification.

(Maximum Word Limit 500 words)

This question is worth 10% of the total tender.

(491 words)

Q3 Response

REDACTED

Q4 Project and risk management

Please set out your arrangements for the management of the project to fulfil the requirements outlined in Document 2 – Service Specification. Your response should consider and address the following points and provide a clear rationale for your answer:

- A detailed project plan outlining key activities, outputs, timescales, milestones and resources allocated. You may additionally attach a project plan as a separate annex that will not count towards your word limit (maximum 2 pages);
- Identify the key operational and strategic posts from within your organisation, or from within your consortium where applicable, the rationale for these posts and the skills required to undertake those functions. Please include the names and CVs of any individuals you have already identified to fill these posts. CVs will not be included in the word count;
- Demonstrate the flexibility of your management structure and its ability to adapt over time. The successful contractor will be required as part of their contractual responsibilities to produce and agree with the department a contract exit plan/strategy; and
- Identify what are the specific risks and issues that you foresee in delivering this project, and set out what contingencies and countermeasures would be put in place to mitigate the risks. Typical areas of risk for this type of activity might include staffing, resource constraints, timing, management, security, systems, communications and operational issues, but this is not an exhaustive list.

(Maximum Word Limit 500 words) Attachments allowed.

This question is worth 10% of the total tender.

(499 words)

Q4 Response
REDACTED
Q5 Social Value
<p>Influence to support strong, integrated communities (Sub-Criteria for MAC 8.2)</p> <p>Activities that demonstrate and describe your existing or planned measures to raise awareness or increase the influence of staff, suppliers, customers, communities and/or any other appropriate stakeholders to promote strong, integrated communities through its performance of the contract, e.g. through engagement; co-design/creation; training and education; partnering/collaborating; and volunteering.</p> <p>Using a maximum of 700 words describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Award Criteria. Please include:</p> <ul style="list-style-type: none">• your 'Method Statement', stating how you will achieve this and how your commitment meets the Award Criteria, and• a timed project plan and process, including how you will implement your commitment and by when. <p>Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to:</p> <ul style="list-style-type: none">• timed action plan• use of metrics• tools/processes used to gather data• reporting• feedback and improvement• transparency <p>KPI: Please propose the number of people-hours spent supporting local community integration, such as volunteering and other community-led initiatives, under the contract.</p> <p>For further guidance on Social Value please see: Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK (www.gov.uk)</p> <p>(Maximum Word Limit 700 words) <i>This question is worth 10% of the total tender.</i> (700 words)</p>
REDACTED

Schedule 4 (Tender)

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Appendix 1: FREEDOM OF INFORMATION SCHEDULE

Refer to the 'Freedom of Information' section in the ITT Process Overview document.

REDACTED

Please complete the above if required and submit additional sheets if necessary.

Schedule 5 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	21/02/2022	Schedule 4 – Tender responses redacted	Duration of contract
2	21/02/2022	Schedule 3 – Pricing Schedule redacted	Duration of contract
3	21/02/2022	Contract Award Form – Personal details redacted	Duration of contract
4	21/02/2022	Schedule 29 Key Supplier Staff - Personal details redacted	Duration of contract

Schedule 7 (Staff Transfer)

1. Definitions

1.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"Employee Liability"	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <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 Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;f) claims whether in tort, contract or statute or otherwise; <p>any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"Former Supplier"	<p>a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same</p>

	as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor);
"Partial Termination"	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);
"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, and for the purposes of Part D: Pensions, shall include the Start Date, where appropriate;
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Personnel List"	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Staffing Information"	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; <p>the identity of the employer or relevant contracting Party;</p> <ul style="list-style-type: none"> (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, bonuses 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;

"Term" the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

"Transferring Buyer Employees" those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to 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 whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply

Schedule 7 (Staff Transfer)

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with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Contract:

- Part C (No Staff Transfer On Start Date)
- Part D (Pensions)
 - - Annex D1 (CSPS)
 - - Annex D2 (NHSPS)
 - - Annex D3 (LGPS)
 - - Annex D4 (Other Schemes)
- Part E (Staff Transfer on Exit)

- 1. PART A: STAFF TRANSFER AT THE START DATE
NOT USED**
- 2. PART B: STAFF TRANSFER AT THE START DATE
NOT USED**

PART C: NO STAFF TRANSFER ON THE START DATE

1. What happens if there is a staff transfer

- 1.1 The Buyer 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 Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
- 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;
- and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:
- (a) the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
 - (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
- 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:
- 1.3.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
 - 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure

Schedule 7 (Staff Transfer)

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- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Start Date.
- 1.5 If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2. Limits on the Former Supplier's obligations

Where in this Part C the Buyer 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 Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

3. PART D: PENSIONS

1. Definitions

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	means either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;
"Fair Deal Employees"	<p>those:</p> <p>(a) Transferring Buyer Employees; and/or</p> <p>(b) Transferring Former Supplier Employees; and/or</p> <p>(c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of</p>

Parts A or B or Paragraph 1.2.4 of Part C;

- (d) where the Former Supplier becomes the Supplier those employees;

who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Annex D2 to this Part D;
"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 including: <ul style="list-style-type: none"> (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and
"Statutory Schemes"	means the CSPA, NHSPS or LGPS.

2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
 - 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

- 2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

3. Supplier obligation to provide information

3.1 The Supplier undertakes to the Buyer:

- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

4. Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Supplier hereby indemnifies the NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
 - 4.2.2 arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- 4.3 The indemnities in this Part D and its Annexes:
 - 4.3.1 shall survive termination of this Contract; and
 - 4.3.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

5. What happens if there is a dispute

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Buyer and the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:
- 5.1.1 who will act as an expert and not as an arbitrator;
 - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
 - 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and the Supplier unless the independent Actuary shall otherwise direct.

6. Other people's rights

- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.

7. What happens if there is a breach of this Part D

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
 - 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

8. Transferring New Fair Deal Employees

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:
- 8.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
 - 8.1.2 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of

this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9. What happens to pensions if this Contract ends

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

10. Broadly Comparable Pension Schemes

10.1 If either:

- 10.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
- 10.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- 10.2.1 supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
- 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may

- reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is terminated;
- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and
- 10.2.6 indemnify the Buyer and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

Annex D1:

Civil Service Pensions Schemes (CSPS)

1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"CSPS Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme;

2. Access to equivalent pension schemes after transfer

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

Annex D2: NHS Pension Schemes

Not Used

Annex D3:

Local Government Pension Schemes (LGPS)

Not Used

Annex D4: Other Schemes

Not Used

Part E: Staff Transfer on Exit

1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Buyer 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 the relevant Contract;
 - 1.1.3 the date which is 12 Months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer 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 Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

not 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

not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which

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were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.1 not 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;
- 1.5.2 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.3 not 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);
- 1.5.4 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.5 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor;
- 1.5.6 give the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.7 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.8 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.9 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.10 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;

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- 1.5.11 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 1.5.12 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
 - 1.5.13 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.14 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require 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;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;

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- 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. Staff Transfer when the contract ends

- 2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity 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.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.
 - 2.5.1 the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;

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- 2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;
- 1. and subject to the Replacement Supplier's and/or Replacement Sub-contractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.
- 2.6 The indemnity in Paragraph 2.5 shall not apply to:
 - 2.6.1 (a) any claim for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or
 - 2.6.2 (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.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier and/or Replacement Sub-contractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer 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.
- 2.10 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any

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appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

- 2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

Schedule 8 (Implementation Plan and Testing)

Part A - Implementation

1. definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Delay"	a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Deliverable Item"	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Milestone Payment"	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
Implementation Period"	has the meaning given to it in Paragraph 7.1;

2. Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 30 days after the Start Date.
- 2.2 The draft Implementation Plan:
- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
 - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its

submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

3. Reviewing and changing the Implementation Plan

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.

4. Security requirements before the Start Date

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval

has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.

- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5. What to do if there is a Delay

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
- 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
 - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
 - 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
- 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
 - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
 - (a) the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When the Buyer can end this contract); or
 - (b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
 - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;

- 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
- 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

7. Implementation Plan

- 7.1 The Implementation Period will be a [six (6)] Month period.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
 - 7.3.1 work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
 - 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
 - 7.3.3 liaise with the incumbent Supplier to enable the full completion of the Implementation Period activities; and
 - 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
 - 7.4.1 how the Supplier will work with the incumbent Supplier and the Buyer Authorised Representative to capture and load up information such as asset data ; and
 - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:
 - 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
 - 7.5.2 mobilise all the Services specified in the Specification within the Contract;

- 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
 - (a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
 - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Supplier.

Annex 1: Implementation Plan

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Part B - Testing

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule [1] (Definitions):

"Component"	any constituent parts of the Deliverables;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Satisfaction Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"Test Issue Threshold"	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
"Test Reports"	the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
"Test Witness"	any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and

**"Testing
Procedures"**

the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. How testing should work

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
 - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
 - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3. Planning for testing

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Start Date but in any case no later than twenty (20) Working Days after the Start Date.
- 3.2 The final Test Strategy shall include:
 - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 3.2.4 the procedure to be followed to sign off each Test;
 - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
 - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;

- 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

4. Preparing for Testing

- 4.1 The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
 - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
 - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

5. Passing Testing

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

6. How Deliverables will be tested

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
 - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
 - 6.2.2 a plan to make the resources available for Testing;
 - 6.2.3 Test scripts;
 - 6.2.4 Test pre-requisites and the mechanism for measuring them; and

6.2.5 expected Test results, including:

- (a) a mechanism to be used to capture and record Test results; and
- (b) a method to process the Test results to establish their content.

7. Performing the tests

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
 - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
 - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 7.6.1 an overview of the Testing conducted;
 - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
 - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
 - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

8. Discovering Problems

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

9. Test witnessing

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
 - 9.3.1 shall actively review the Test documentation;
 - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 9.3.3 shall not be involved in the execution of any Test;

- 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
- 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

10. Auditing the quality of the test

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

11. Outcome of the testing

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
 - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
 - 11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the

Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

- 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- 11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and

11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

12. Risk

12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or

12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

Annex 1: Test Issues – Severity Levels

1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - 2.1.1 causes a Component to become unusable;
 - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables;

3. Severity 3 Error

- 3.1 This is an error which:
 - 3.1.1 causes a Component to become unusable;
 - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

4. Severity 4 Error

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

5. Severity 5 Error

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Contract**") [insert Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [insert Buyer name] ("**Buyer**") and [insert Supplier name] ("**Supplier**") dated [insert Start Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in the Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]

Schedule 10 (Service Levels)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Critical Service Level Failure"	has the meaning given to it in the Award Form;
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Credit Cap"	has the meaning given to it in the Award Form;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
"Service Level Threshold"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

2. What happens if you don't meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or

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2.4.2 the Service Level Failure:

- (a) exceeds the relevant Service Level Threshold;
- (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
- (c) results in the corruption or loss of any Government Data; and/or
- (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 of the Core Terms (Buyer Termination Rights).

2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and

2.5.3 there is no change to the Service Credit Cap.

3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph **Error! Reference source not found.** shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

Part A: Service Levels and Service Credits

1. Service Levels

If the level of performance of the Supplier:

1.1 is likely to or fails to meet any Service Level Performance Measure; or

1.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

1.2.2 instruct the Supplier to comply with the Rectification Plan Process;

1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or

1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

2. Service Credits

2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

Annex A to Part A: Services Levels and Service Credits Table

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Monthly reporting: submit a monthly programme report by the third Business Day of the month, including any exception events within this report	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
In delivering the Services offer a responsive and supportive service to participants and their facilitators: Respond to 100% of queries and correspondence within 3 Business Days of receipt	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Ensure that invoices are submitted to DEE within 10 Business Days of the end of the relevant charging period/completion of the activity.	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level

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Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
				Performance Measure
Ensure that Change Control Notes are signed by both Parties prior to any additional work being undertaken (DEE or Contractor to ensure paperwork is issued in a timely fashion when change required).	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Main management contact to report all complaints orally and in writing to DFE within 3 Business Days.	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Ensure that all records are maintained and kept up to date throughout the Term. Records must be updated within 5 Business Days of a Records and request being made or an	Timelines	100%		0.5% Service Credit gained for each percentage under the specified Service Level

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Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
event taking place (subject to system questionnaires availability).				Performance Measure
Social Value. Number of hours spent supporting local community integration.	Hours	150 hours		0.5% Service Credit gained for each percentage under the specified Service Level

The Service Credits shall be calculated on the basis of the following formula:

Formula: $x\%$ (Service Level Performance Measure) - $x\%$ (actual Service Level performance) = $x\%$ of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer

Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75% (e.g. actual performance achieved against this Service Level in a Service Period) = 23% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer]

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph **Error! Reference source not found.** of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
 - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.

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- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2. Satisfaction Surveys

- 2.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

Schedule 11 (Continuous Improvement)

1. Supplier's Obligations

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 1.3.1 identifying the emergence of relevant new and evolving technologies;
 - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
 - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.
- 1.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

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- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
 - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

Schedule 13 (Contract Management)

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Operational Board"	the board established in accordance with paragraph 4.1 of this Schedule;
"Project Manager"	the manager appointed in accordance with paragraph 2.1 of this Schedule;

2. Project Management

2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

3. Role of the Supplier Project Manager

3.1 The Supplier Project Manager shall be:

- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
- 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
- 3.1.3 able to cancel any delegation and recommence the position himself; and
- 3.1.4 replaced only after the Buyer has received notification of the proposed change.

3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

4. Role of The Operational Board

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

5. Contract Risk Management

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
- 5.2.1 the identification and management of risks;
 - 5.2.2 the identification and management of issues; and
 - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

1. Quarterly meetings with DfE to discuss quarterly progress reports and contract KPIs.
2. Weekly (or as required) catch up meetings between the DfE, Board Chair and the Supplier, to discuss Board priorities and policy development.

Schedule 14 (Business Continuity and Disaster Recovery)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster Recovery Deliverables"	the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Disaster Recovery System"	the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule;

2. BCDR Plan

- 2.1 At least ninety (90) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
- 2.1.2 the recovery of the Deliverables in the event of a Disaster

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- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3. General Principles of the BCDR Plan (Section 1)

- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
 - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - (d) a business impact analysis of different anticipated failures or disruptions;

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- 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
 - 3.1.9 identify the procedures for reverting to "normal service";
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
- 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.

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- 4.2 The Business Continuity Plan shall:
- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
 - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
- 5.2.1 loss of access to the Buyer Premises;
 - 5.2.2 loss of utilities to the Buyer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 any applicable Performance Indicators (PI's) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
 - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

6.1 The Supplier shall review the BCDR Plan:

6.1.1 on a regular basis and as a minimum once every six (6) Months;

6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and

6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably

shown that the changes are required because of a material change to the risk profile of the Deliverables.

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

9. Circumstances beyond your control

- 9.1 The Supplier shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.