



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.3 (December 2020)

AGREEMENT FOR FUJITSU SERVICES & FUJITSU PROJECT SERVICES
30th September 2022

OFFICIAL – SENSITIVE – COMMERCIAL

OFFICIAL – SENSITIVE
OFFICIAL

DATED

30th September 2022

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

and

(2) FUJITSU SERVICES LIMITED

AGREEMENT

relating to

FUJITSU SERVICES

AND

FUJITSU PROJECT SERVICES

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THIS AGREEMENT is made on 30th September 2022

BETWEEN:

- (1) **THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the **"Authority"** or **"Customer"** or **"HMRC"**); and
- (2) **FUJITSU SERVICES LIMITED** a company registered in England and Wales under company number 00096056 whose registered office is at Lovelace Road, Bracknell, Berkshire, United Kingdom, RG12 8SH (the **"Supplier"** or **"Fujitsu"**),

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

INTRODUCTION

- A. The Customer and Supplier are parties to an agreement dated 30th September 2020 (as amended from time to time) for the provision by the Supplier to the Customer of services including the provision of the **"Additional Services"** (the **"2020 Services Agreement"**).
- B. The Authority has a requirement for various IT services to replace the Additional Services (the **"Fujitsu Services"**) and for associated IT project services (the **"Fujitsu Project Services"**) in circumstances where such services cannot be provided by another supplier and as a consequence the Parties are entering into this Agreement for the Fujitsu Services and Fujitsu Project Services so that these to be available to the Authority in place of the Additional Services.
- C. In light of the above, the Parties agree that in accordance with the terms of this Agreement, following commencement of the Fujitsu Services and Fujitsu Project Services under this Agreement from the Effective Date, the Additional Services and Annex 2-9 will be removed from the 2020 Agreement and will be replaced by the Fujitsu Services and Fujitsu Project Services under this Agreement.

IT IS AGREED as follows:

SECTION A | PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears. Where in a Schedule that was previously used in connection with the Additional Services and or the Expired Services then unless otherwise provided in Schedule 1 (*Definitions*) to this Agreement or the context otherwise requires, capitalised expressions shall have the meanings defined (1) in the 2020 Agreement in respect of the Expired Services; and if absent from that agreement as defined in the 2004 Agreement in respect of the Expired Services.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;

- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) where the Effective Date of this Agreement is prior to Exit Day any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):
 - i. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day, as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal Act) 2018 as modified by domestic law from time to time; and
 - ii. any reference to any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- (f) 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”;
- (g) 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;
- (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (i) unless otherwise provided and save for references in Annexes 1 and 2 of Schedule 5 (*IPR*) :
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
- (j) any reference to a time of day (unless expressly specified otherwise) is to London time; and
- (k) references to this Agreement are references to this Agreement as amended from time to time.

- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) Schedule 2.8 (*Data Processing*);
 - (d) any other Schedules and their Annexes;
 - (e) any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement, the Authority is acting as part of the Crown.

2 DUE DILIGENCE

- 2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:
- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the commencement of performance of its obligations under this Agreement (the Parties acknowledge that there will be an ongoing need for additional information and documents reasonably necessary or relevant for the subsequent ongoing performance of this Agreement);
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (iii) the operating processes and procedures and the working methods of the Authority;
 - (iv) the ownership, functionality, capacity, condition, and suitability for use in the Services of the Authority Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence

Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

- (d) it has advised the Authority in writing and or has included in Schedule 2.1 (*Services Description*) and or Schedule 2.9 (*Service Infrastructure Updating*) Schedule 2.2 (*Performance Levels*) and or Schedule 7 (*Financial Matters*) details of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed and process to be followed to remedy each such unsuitable aspect; and
 - (iii) a timetable and process for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement including the Services Description and/or Authority Responsibilities as applicable.

2.2 Subject to Clause 2.1 and or Schedule 2.1 (*Services Description*) or Schedule 2.2 (*Performance Levels*) the Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment save in respect of the matters set out in respect of unsuitable aspects in Schedule 2.1 (*Services Description*);
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

2.4 The Customer acknowledges that immediately prior to the Effective Date, the Supplier provided the Additional Services to the Customer under the 2020 Agreement (and earlier had provided the Expired Services) and the Parties have agreed that, from the Effective Date, the Fujitsu Services provided under this Agreement shall be essentially the same as the equivalent Additional Services and provided that they are essentially the same, the Customer agrees that, as at the Effective Date, the Fujitsu Services are suitable to meet the Customer's requirements.

3 WARRANTIES

3.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;

- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised, and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this Agreement;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid, and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium, or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) subject always to Clause 43, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
- (j) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;

- (k) it has all necessary existing rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (l) the Financial Model is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (m) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (n) it is not aware of any other matters relating to itself or its Affiliates which are likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (o) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date;
- (p) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and
- (q) neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

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

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

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of

the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B | THE SERVICES

4 TERM

4.1 This Agreement shall:

- (a) come into force on the date of its signature by both Parties and Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 27 (*Relief and Compensation*), 32 (*Force Majeure*), 34 (*Termination Rights*), 35 (*Consequences of Expiry or Termination*), 38 (*Waiver and Cumulative Remedies*), 39 (*Relationship of the Parties*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 46 (*Notices*), 47 (*Disputes*) and 49 (*Governing Law and Jurisdiction*), shall all be binding and enforceable as between the Parties from the date of signature;
- (b) the Fujitsu Services and Fujitsu Project Services shall commence on the Effective Date at which time all the remaining parts of this Agreement shall come into effect and be binding and enforceable between the Parties; and
- (c) unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Authority elects to extend the Initial Term in accordance with Clause 4.2 (or subsequently extends any extension thereof), at the end of the final Extension Period.

4.2 The Authority shall have the right:

- (a) at its sole discretion, to extend the Initial Term by for a further period of up to 12 months by the Authority giving to the Supplier not less than six (6) months' written notice before the end of the Initial Term;
- (b) to request the Supplier to agree to extend the Initial Term by for a further period of up to 12 months provided that the request is made not less than six (6) months before the end of the Initial Term as extended; and
- (c) the Supplier may in its absolute discretion agree to a further period of extension on terms to be agreed between the Parties;

each an "Extension Period".

4.3 Not Used

4.4 The Supplier shall provide the Authority (upon the Authority's request) with reasonable assistance to inform the Authority's decision as to whether to exercise its option to extend the Initial Term of this Agreement, including reasonable assistance with any benchmarking that the Authority reasonably may wish to carry out to establish whether the Services would represent value for money prior to exercise of an option to extend for the Extension Period in accordance with 42 (a). The Supplier also agrees to assist the Authority with ascertaining the potential impact of any proposed extension on this Agreement including potential adjustments to the Charges (if applicable).

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

SDC02 Data Centre

[REDACTED]

5 SERVICES**1. Standard of Services**

5.1 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with Schedule 2.1 (*Services Description*); and
 - (ii) are supplied in accordance with the provisions of this Agreement; and
- (b) the Services to be provided from the Effective Date that are similar to the Additional Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Additional Services in the period immediately prior to the Effective Date.

5.2 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards set out in Schedule 2.3 (*Standards*);

- (iv) the security requirements set out in Schedule 2.4 (*Security Management*);
 - (v) the Quality Plans, if any; and
 - (vi) The Authority's IT Strategy of moving to Cloud services and Crown hosting
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2(a)(i) to(v);
- (b) deliver the Services efficiently using the business processes and ways of working agreed between the Parties having regard to the Authority's obligation to ensure value for money; and
- (c) comply with its obligations under Schedule 11 (*Collaboration*).

5.3 In the event that the Supplier becomes aware of any new inconsistency between the requirements of Clause 5.2, the Supplier shall notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, engage to determine how to resolve such inconsistency.

2. **Supplier covenants**

5.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
- (d) minimise any unnecessary disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;

- (e) ensure that any Documentation provided by the Supplier to the Authority and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) without limitation to its obligations under Schedule 11 (*Collaboration*), co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance reasonably requested by the Authority in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Fujitsu Project Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.4(g);
- (i) continue to provide the Authority with such assistance as the Authority may reasonably require during the Term as the Authority was entitled to receive for the Additional Services in respect of the supply of the Fujitsu Services in accordance with Schedule 2.1;
- (j) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (l) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority; and
- (n) manage closure or termination of Services involving end of life of Goods to take account of the Authority disposals requirements, including recycling and scope for re-use, and all applicable Standards.

5.5 NOT USED.

5.6 NOT USED

5.7 NOT USED

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.4 and any other rights and remedies of the Authority howsoever arising, and subject to the Parties agreeing that it is not anticipated that the Supplier shall create any Specially Written Software for the Authority after the Effective Date, the Supplier warrants to the Authority that all components of any Specially Written Software for the Fujitsu Project Services shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation;
- (c) deliver the required functionality and interoperability; and
- (d) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

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

- (a) any lawful withholding of the Service Charges by the Authority;
- (b) the existence of an unresolved material Dispute; and/or
- (c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement including under Clause 34.2(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Fujitsu Project Services

5.10 In addition to the Fujitsu Services the Authority may request the Supplier to provide the Fujitsu Project Services in accordance with Schedule 2.1 (*Services Description*), Schedule 4.1 (*Supplier Solution*) and Schedule 6.3 (*Projects and Ordering*) and subject to payment of Fujitsu Project Services Charges in accordance with Schedule 7 (*Financial Matters*).

Authority Responsibilities

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

Scope

5.12 With effect from the Effective Date, the Authority shall pay the Supplier, until the expiry or termination of this Agreement, as a minimum, the Flexible Collar for the delivery of the Fujitsu Services. The amount of the Flexible Collar may increase or reduce in value in accordance with

Schedule 7 (Financial Matters) and the Authority shall be entitled to reduce or remove the value of the Flexible Collar in accordance with Schedule 7 (Financial Matters) if and to the extent that:

3. (a) the Authority is able, using its own personnel (which may include its directors, officers, employees, agents, individuals acting as consultants and/or individual contractors) and its own systems, to perform any or all of services equivalent to the Fujitsu Services at any time without the use of infrastructure, connectivity or software provided by the Supplier;
4. (b) there is a reorganisation of the Authority which results in an assignment, novation or other transfer of a contract with a third party supplier for the supply of services which are the same as or substantially similar to the Fujitsu Services to the Authority;
5. (c) Termination occurred and/or the Authority has issued a Termination Notice in accordance with clause 34.1;

6. Conflicts of Interest

5.13 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any member of the Supplier Personnel and the duties owed to the Authority under the provisions of the Contract. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.

5.14 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a Material Default of this Agreement and, accordingly, something that can be relied on for Termination under Clause 34.1.

6 PROJECTS AND IN-FLIGHT PROJECTS

Projects

6.1 If requested by the Authority, the Supplier shall provide any Project as agreed with the Authority in accordance with Clause 5.10.

Testing and Achievement of Milestones for Fujitsu Project Services

6.2 The Parties shall each comply with the provisions set out in each individual Fujitsu Project Services project (if any) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

6.3 No Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued unless the Authority has put the Milestone deliverables into live use.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall from the Effective Date:

- (a) perform the Fujitsu Services under this Agreement in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator; and
- (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

[REDACTED]

Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, the relevant Service Credits shall be deducted from the Service Charges in accordance with Schedule 2.2 (*Performance Standards*) and Schedule 7.1 (*Charges and Invoicing*);
- (b) any Performance Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition, and without prejudice, to any Service Credits accruing in accordance with Clause 7.2(a)).

7.3 The Parties agree that, where a sum is expressed to be due from the Supplier to the Authority as a Service Credit:

- (a) such sums are a price adjustment to reflect the actual quality of service provided to the Authority and do not represent an estimate of the loss or damage that may be suffered by the Authority in respect of the breach of the Performance Indicators and/or the Performance Failure which gives rise to the Service Credit; and
- (b) the crediting of such sums is, and shall be, without prejudice to any other right, remedy, or entitlement which the Authority may have under this Agreement (including but not limited to the right to claim damages from the Supplier relating to any loss arising from such failure to achieve the relevant Target Performance Level), provided that any claim for damages resulting from a breach of the Supplier's performance obligations, in respect of which a Service Credit has already been paid, shall be reduced by the amount of that Service Credit.

7.4 To the extent that any failure to achieve a Service Level has been caused by an act or omission of the Authority (including a failure of the arising under Schedule 3 (*Authority Responsibilities*) in respect of the management of risk and its aged estate and associated remedial activity), a Services Recipient or a Third Party Supplier, then:

- (a) as a separate and distinct provision to the rights and obligations of the Parties under Clause 27 of these Terms and Conditions and Schedule 2.2 (*Performance Levels*), the Supplier shall be relieved from its obligation to achieve the applicable Service Level, such failure shall not be a Service Level Failure and no Service Credits shall accrue in respect of such failure; and
- (b) the Customer shall, and shall procure that any applicable Services Recipients or Third Party Suppliers, use Commercially Reasonable Efforts to:

- (i) minimise the impact of such failure on both the Supplier and the Customer (together with any affected Services Recipients); and
- (ii) prevent the reoccurrence of the act or omission which resulted in such failure.

Changes to Performance Indicators and Service Credits

7.5 The provisions of Schedule 2.2 (*Performance Levels*) shall apply in relation to any changes to be made to Key Performance Indicators and Service Credits (including, but without limitation, in respect of any Key Business Events (as defined in accordance with that Schedule)) and Service Levels and Target Performance Levels may be added to the Agreement only through the Change Control Procedure.

8 SERVICES IMPROVEMENT

8.1 Against the context of:

- (a) The Fujitsu Services involving infrastructure, software, connectivity and services that the Authority is in the process of phasing out over the term of this Agreement;
 - (b) Which the Authority does not want to refresh as it has a new target operating model using Crown Hosting and Cloud services and which the Authority has already chosen not to update and improve the equivalent services delivered as Expired Services and or Additional Services,
7. together the “Exit Context”)

8.2 the Supplier shall at the reasonable request of the Authority bring to the attention of the Authority matters that the Authority is not aware of which may be relevant to the Parties identifying new or potential improvements to the Fujitsu Services in accordance with this Clause 8 and Schedule 2.9 (*Service Infrastructure Updating and the Legacy List*). As part of this obligation the Parties shall timetable on the standing agenda for the Strategic Board regular reviews at least once every six (6) months of any potential improvements that either of the Parties has identified in connection with the Fujitsu Services based on the Exit Context or a statement that the Authority has available funds to pay the Supplier needed to make any initiative viable on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services notwithstanding the Exit Context, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Fujitsu Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Fujitsu Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk arising in respect of the Fujitsu Services;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

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

- 8.3 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be considered and implemented and shall be provided together with a proposal which includes information as to the benefit for the Authority of the improvement and any associated Charges. The Supplier shall provide any further information that the Authority reasonably requests.
- 8.4 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 ASSETS, EQUIPMENT, MAINTENANCE AND ACCOMMODATION

Assets

- 9.1 The Parties shall comply with the provisions of Schedule 4.5 (Assets).

Supplier Equipment

- 9.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements.
- 9.3 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.4 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 9.5 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.6 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.7 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or

any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

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

- (a) unless otherwise expressly agreed, the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- (b) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months] after delivery;
- (c) if following inspection or testing the Authority reasonably considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- (d) without prejudice to any other rights or remedies of the Authority:
 - (i) risk in the Goods shall pass to the Authority at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Authority at the time of payment for them.

Accommodation

9.9 The Parties shall each comply with the provisions of Schedule 2.6 (*Accommodation*).

SECTION C | PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 Subject to Clause 10.2, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Fujitsu Services and the Fujitsu Project Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7 (*Financial Matters*).
- 10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7 (*Financial Matters*), the Authority shall be responsible for providing the Supplier with a purchase order number from the Authority prior to the commencement of any Fujitsu Services and or for Fujitsu Project Services.
- (a) Such a Purchase Order shall be provided by the Authority in respect of the Fujitsu Services to the Supplier on or before the Effective Date. The Charges payable for the Fujitsu Services shall accrue from the Effective Date and shall be payable by the Authority to the Supplier irrespective of whether the Authority has met its obligation to provide any necessary purchase order;
 - (b) In respect of Fujitsu Project Services, the Supplier acknowledges and agrees that should it commence any such Fujitsu Project Services without first receiving from the Authority a purchase order number:
 - (i) the Supplier does so at its own risk; and
 - (ii) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.
- 10.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Schedule 7.5 (*Financial Reports and Audit Rights*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*).
- 10.4 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

Set-off and Withholding

- 10.5 The Authority may set off any undisputed amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.6 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to this Agreement it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Value For Money

- 10.7 The Parties shall comply with the provisions of Schedule 7.1 (*Charges and Invoicing*), 7.3 (*Value for Money*) and Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the operation of open book and PGS in respect of the Fujitsu Services.

Financial Distress

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

Promoting Tax Compliance

- 10.9 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.10 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or Sub-contractor.
- 10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.
- 10.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 shall be paid in

cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

- 10.15 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.9 to 10.15 (inclusive) then this shall constitute a right to terminate for Material Default in accordance with Clause 34.1.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15, for the purpose of the collection and management of revenue for which the Authority is responsible.

Use of Off-shore Tax Structures

- 10.18 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall it ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of offshore companies other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 10.19 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 10.20 In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.
- 10.21 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Material Default giving rise to the right to terminate in accordance with Clause 34.1.

PRIME CHARGES ELEMENT

- 10.22 The Parties have agreed that for the duration of the Fujitsu Services (and payment of Fujitsu Services Charges at no less than the Flexible Collar) then the operation of Paragraph 7 of Schedule 5 to the 2020 Services Agreement shall be suspended. As a result although the Prime Agreement has expired prior to the expiry of the Term on the VPaaS Services, and as a consequence there has been a Prime End, the effective date of the Prime End shall by this agreement be suspended during the ongoing payment of the said Fujitsu Services Charges.

SECTION D | CONTRACT GOVERNANCE**11 GOVERNANCE**

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

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 12.1 The Supplier shall comply with the provisions of:
- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - (b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 **CHANGE**

Change Control Procedure

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the date of signature of the Agreement by the parties.
- 13.3 Each Party shall monitor and shall keep the other Party informed in writing of any Change in Law which may impact the Fujitsu Services. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.
- 13.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges, this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Target Performance Levels; and
 - (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.5 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E | SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL**14.1** The Supplier shall:

- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.4 (*Security Management*);
 - (iii) comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and
 - (iv) meet the training and awareness requirements set out in paragraph 23.2 (e);
- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

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

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 14.3 The Parties have agreed that as at the date of this Agreement there are no Key Personnel needing to be identified and added to Schedule 9.2 (*Key Personnel*).
- 14.4 In the event that the Parties agree that after the Effective Date Key Personnel and or Key Roles need to be added then in those circumstances the remainder of Clause 14.5 to 14.8 shall apply.
- 14.5 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.6 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.7 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.8 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and

- (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.9 Subject to Clause 14.12 the Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or of any Supplier Personnel for which the Supplier is responsible; and
- (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.10(a) or why Clause 14.10(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.10 then this shall constitute a Material Default giving rise to the right to terminate in accordance with Clause 34.

14.11 The Authority may internally share any information which it receives under Clause 14.10(c).

Staff Transfer

- 14.12 In respect of the Fujitsu Services the Parties agree to continue from the Effective Date the application to the Fujitsu Services of the position and agreement in respect of the Additional Services which were and are subject to Clause 12 of the 2004 Agreement as amended by CCN FS643.
- 14.13 The said Clause 12 of the 2004 Agreement (as amended by CCN FS643) applies to the Additional Services as if it were incorporated into the 2020 Agreement and shall from the Effective Date apply to this Agreement and to those individuals who would have been Qualifying Supplier Employees under the 2004 Agreement were it not for the fact that such roles are from the Effective Date to be performed in respect of the relevant Fujitsu Services.
- 14.14 Accordingly, the said Clause 12 (as amended by CCN FS643) shall also apply as a result of this Agreement, after the Effective Date, to the Fujitsu Services as if it were incorporated into this Agreement and applied to those individuals who would have been Qualifying Supplier Employees under the 2004 Agreement were it not for the fact that such roles are now to be performed in respect of the relevant replacement Fujitsu Services. In particular from the Effective Date the said Clause 12.1 (c) shall apply so that the rebate to the Customer available under that Clause in respect of Qualifying Supplier Employees shall also arise in the circumstances of a transfer as a direct result of the termination of the Fujitsu Services but subject always to the application of the remainder of Clause 12 as amended by CCNFS643 in such circumstances.
- 14.15 The Parties agree that:
- (a) The Fujitsu Services and Fujitsu Project Services are to be delivered after the Effective Date as replacement or follow on services in place of the Additional Services and the commencement of the provision of the Fujitsu Services and or the Fujitsu Project Services or any part of such Services shall not involve or result in one or more Relevant Transfers, so that Schedule 9.1 (*Staff Transfer*) shall not apply.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

- 15.1 Not used
- 15.2 Not used
- 15.3 Not used
- 15.4 Not used

Appointment of Sub-contractors

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

- 15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor including contract value; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Authority.
- 15.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
 - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - (c) the proposed Sub-contractor employs unfit persons; and/or
 - (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.31;
8. in which case, the Supplier shall not proceed with the proposed appointment.
- 15.9 If:
- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.6; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.7; and
 - (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.12 (*Appointment of Key Sub-contractors*)),
- the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

- 15.10 The Supplier shall record details of all Sub-contractors it has appointed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors*).
- 15.11 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:
- (a) a copy of any Sub-contract; and
 - (b) any further information relating to that Sub-contract as reasonably requested by the Authority.

Appointment of Key Sub-contractors

- 15.12 Where after the Effective Date the Supplier wishes to enter into a new Key Sub-contract or replace an existing Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.31.
- 15.13 In making a request pursuant to Clause 15.12, the Supplier shall provide the Authority with the following information about the proposed Key Sub-contractor:
- (a) its name, registered office and company registration number;
 - (b) a copy of the proposed Key Sub-contract;
 - (c) the purposes for which the proposed Key Sub-contractor will be employed, including the scope of any services to be provided by the proposed Key Sub-contractor;
 - (d) if relevant, confirmation that the Key Sub-contract requires the proposed Key Sub-contractor to comply with any relevant service levels;
 - (e) where the proposed Key Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-contract has been agreed on "arms-length" terms; and
 - (f) any further information reasonably requested by the Authority.
- 15.14 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors*).
- 15.15 The Supplier shall notify the Authority if and to the extent to which any Key Sub-contractor has or intends to sub-contract to a third party any of the services it provides to the Supplier under the

terms of the Key Sub-contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub-contractor provides to the Authority, a copy of the contract between the Key Sub-contractor and the third party.

15.16 Except where the Authority has given its prior written consent, the Supplier shall ensure that each new Key Sub-contract entered into after the Effective Date shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.4(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data;
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
 - (vi) the reporting requirement set out in paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
 - (vii) the tax compliance requirements set out in Clauses 10.9 to 10.17 (inclusive) (*Promoting Tax Compliance*);
 - (viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
 - (ix) the disclosure of Confidential Information set out in Clause 21 (*Confidentiality*); and
 - (x) the slavery and human trafficking compliance requirements set out in Clause 36.5 (*Modern Slavery*);

- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clause 34.1 (*Termination by the Authority*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

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

15.18 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:

- (a) a copy of any Key Sub-contract; and
- (b) any further information relating to that Key Sub-contract as reasonably requested by the Authority.

Supply chain protection

15.19 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;

- (c) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
- (e) granting the Supplier a right to terminate the Sub-contract if the relevant Subcontractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;
- (f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*); and
- (g) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.9 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement; and
- (h) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*) and in respect of the slavery and human trafficking compliance requirements set out in Clause 36.5 (*Modern Slavery*).

15.20 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.20(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.21 Without prejudice to clause 15.20(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.21(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.22 [Redacted]

- 15.23 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.24 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.25 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 15.26 [Redacted]
- 15.27 The Supplier shall and shall ensure that any of its Sub-Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-Contractors for the purposes of monitoring and/or better understanding of the Services.

Termination and Amendment of Sub-contracts

- 15.28 After the Effective Date the Supplier shall, as soon as is reasonably practicable, notify the Authority of any proposed new Sub-contract or amendment to an existing Sub-contract executed between the Supplier and a Sub-contractor, and if requested, the Supplier shall provide the Authority with a copy of such proposed new Sub-contract or amendment to an existing Sub-contract. The Supplier shall not execute a new Sub-contract or materially amend the terms of any existing Sub-contract without the Authority's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 15.29 The Authority, at its sole discretion, may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1 (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;

- (iv) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.17 (inclusive) (*Promoting Tax Compliance*); and/or
 - (v) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.31; and
- (b) a Key Sub-contract where after the Effective Date:
 - (i) there is a change of Control of the relevant Key Sub-contractor, unless:
 - (A) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (B) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control; and or
 - (ii) the relevant Key Sub-contractor has failed to comply with the terms of the Key Sub-contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*).

Retention of Legal Obligations

15.30 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

Exclusion of Sub-contractors

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

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

Reporting SME/VCSE Sub-contracts

15.32 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.2 (*Report and Records*) Annex 5 and in accordance with any guidance issued by the Authority from time to time.

15.33 The Authority may update the Supply Chain Transparency Information Template from time to time (including the date required and/or format) by issuing a preplacement version with a least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F | INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) subject to Clause 16.4, the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs;
 - (iv) the Supplier Background IPRs; and
 - (v) Supplier Protected IPR
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data; and
 - (iii) the Authority Background IPRs.
- (c) In respect of any Specially Written Software and Project Specific IPRs (except for any Supplier Know-How or trade-secrets, Supplier Confidential Information or Supplier Background IPR, Supplier Protected IPR and IPR the subject of existing third party rights) created by the Supplier and paid for by the Authority after the Effective Date shall be subject to Clause 16.4.
- (d) The Parties agree that any Intellectual Property Rights of the Supplier or its licensors and any Intellectual Property Rights of the Authority or its licensors existing as at the date of signature or this agreement and or the Effective Date shall remain the property of the respective Parties and shall not be amended or removed by this Agreement.

16.2 Where after the Effective Date either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made) in order to align to Clause 16.1.

16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Specially Written Software and Project Specific IPRs

16.4 Subject to Clause 17.17(Patents), the Supplier shall assign to the Authority, with full title guarantee, future rights that are created by the Supplier by Agreement between the Parties after the Effective Date in respect of relevant Project Specific IPRs and Specially Written Software, as appropriate, which the Parties have agreed should belong to the Authority and in respect of which the Authority has agreed to pay to acquire such rights provided such rights were first created after the Effective Date by the Supplier for the Authority including where agreed and appropriate (without limitation):

- (a) the Documentation, and the Object Code of the Specially Written Software; and
- (a) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “Software Supporting Materials”);

but not including any Supplier Know-How, trade secrets, Confidential Information, Supplier Background IPRs and Supplier Protected IPR.

17 LICENCES GRANTED BY THE SUPPLIER

Third Party Software and Third Party IPRs

17.1 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on terms agreed by the Authority.
- (b) Or if the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs the Supplier shall:
 - (i) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - (ii) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

11. Patents

17.2 Where a patent owned by the Supplier is necessarily infringed by the permitted and lawful use of the Specially Written Software or Project Specific IPRs by the Authority, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty free, worldwide patent licence to use the infringing methods, material or software solely for the purpose for which they were delivered under this Agreement for use in conjunction with the Specially Written Software or Project Specific IPRs acquired by the Authority as a result of an express agreement between the Parties.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
 - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs, Authority Data, the Specially Written Software and the Project Specific IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs, Authority Data, the Specially Written Software and/or the Project Specific IPRs.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim arising as a result of the provision of the Fujitsu Services and or Fujitsu Project Services after the Effective Date.
- 19.2 The Authority shall at all times, during and after the Term, on written demand indemnify the Supplier and each other Indemnified Person, and keep the Supplier and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim arising in respect of the Authority Software, the

Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs.

19.3 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

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

19.4 If the Supplier elects to procure a licence in accordance with Clause 19.3(a) or to modify or replace an item pursuant to Clause 19.3(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

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

20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as reasonably requested by the Authority in the format agreed between the Parties.

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

20.5 The Supplier shall from the Effective Date continue to perform and maintain backups of Service Infrastructure and Authority Data for the Fujitsu Services in line with existing agreements for such

backups operated for the Expired Services and the Additional Services. The Supplier shall continue to handle and store any backups taken in accordance with earlier agreements in that respect.

- 20.6 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.7 The Supplier may use, implement or permit the implementation of cloud computing technology (meaning a solution whereby the Authority Data is stored on servers that are not owned, leased or operated by the Supplier) by any supplier or any Sub-contractor:
- (a) where such use has been approved by the Authority prior to the Effective Date;
 - (b) with the prior written consent of the Authority Representative; or
 - (c) where agreed between the Parties through the Change Control Procedure.
- 20.8 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.9 The Authority shall notify the Supplier of any changes or proposed changes to the requirements of Schedule 2.4 (*Security Management*).
- 20.10 If the Supplier believes that a change or proposed change to the requirements of Schedule 2.4 (*Security Management*) will have a material and unavoidable cost implication to the Services, it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.11 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.10 the Supplier shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

- 20.12 The Supplier shall use Commercially Reasonable Efforts to ensure that no Malicious Software is coded or introduced into the Technical Infrastructure.
- 20.13 Without prejudice to Clause 20.10 above, the Supplier shall regularly check for, and use Commercially Reasonable Efforts to delete, Malicious Software in the Technical Infrastructure.
- 20.14 Without prejudice to the Supplier's obligations in 20.10 and 20.11 but subject to Clause 20 (and relief under Schedule 2.9) obligations in respect of data loss, if any Malicious Software is found in the Technical Infrastructure or in any systems or Software, the Supplier shall use Commercially Reasonable Efforts, at no additional charge, to reduce the effects of the Malicious Software and, to the extent that the Malicious Software causes a loss of operational efficiency or a loss of data, to restore such lost data to the latest backups (as such back-ups are required to be made by the Supplier in accordance with Schedule 2 (*Business Requirements*)).

20.15 The Supplier shall not, without the prior written agreement of the Customer, insert or allow the insertion into any Software of any code which would have the effect of disabling or otherwise shutting down all or any portion of the Supplier's Solution. With respect to any disabling code that may be part of such Software, the Supplier shall not invoke such disabling code at any time, including upon Termination of this Agreement, without the Customer's prior written consent.

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

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

- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
- (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

20.17 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.16 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

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

21 CONFIDENTIALITY

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

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

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

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

21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply. If the Supplier is required to disclose any Confidential Information pursuant to non-UK law or non-UK binding order provided by a non-UK governmental body or court, the Supplier shall where legally possible and unless the Parties agree otherwise:

- a) promptly notify the Authority of such requirement, the full circumstances, the affected Confidential Information and extent of the required disclosure, in each case as far in advance as possible;
- b) use reasonable endeavours to object to any such demands that it deems overbroad or otherwise inappropriate;
- c) use reasonable endeavours to object to any such demands that it deems overbroad or otherwise inappropriate; and
- d) use reasonable endeavours to object to any such demands that it deems overbroad or otherwise inappropriate.

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

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

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

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

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

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

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

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and

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

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

- 22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.2 (*Reports and Records*).
- 22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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

23 PROTECTION OF PERSONAL DATA

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

23.2 The Supplier shall:

- (a) not Process or transfer the Personal Data other than in accordance with the Authority's written instructions, as set out in Schedule 2.8 (*Data Processing and List of Sub-processors*), unless required by EU or member state law or UK Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data and/or Sanitised Personal Data, unless prohibited by law;
- (b) acknowledge that the provision of the Services involves the Processing of the types of Personal Data and categories of Data Subject set out in Part A of Schedule 2.8 (*Data Processing and List of Sub-processors*), and shall, with the Authority's written consent, update the details in Schedule 2.8 (*Data Processing and List of Sub-processors*) from time to time as necessary;
- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*) and having regard to the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;

- (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (d) not disclose or transfer the Personal Data and/or Sanitised Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data and/or Sanitised Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);
- (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and/or Sanitised Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 23 and Clauses 20 (Authority Data and Security Requirements) and 21 (Confidentiality);
 - (ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
 - (iii) are informed of the confidential nature of the Personal Data and Sanitised Personal Data and do not publish, disclose or divulge any of the Personal Data and/or Sanitised Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;
 - (iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Relevant Data Protection Laws); and
 - (v) retain evidence of the steps taken in respect of Clauses 23.2(e)(i) to 23.2(e)(iv) above for the Authority's inspection;
- (f) notify the Authority immediately upon becoming aware of a reasonably suspected, "near-miss" or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the UK GDPR. Such notification shall as a minimum:
 - (i) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
 - (ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
 - (iii) describe the likely consequences of the Personal Data Breach; and
 - (iv) describe the measures taken or proposed to be taken to address the Personal Data Breach.
- (g) co-operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, "near-miss" or actual Personal Data Breach including but not limited to;

- (i) documenting any such Personal Data Breaches and reporting them to any supervisory authority;
 - (ii) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
 - (iii) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;
- (h) notify the Authority immediately if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Request);
 - (B) a request to rectify, any inaccurate Personal Data;
 - (C) a request to have any Personal Data erased;
 - (D) a request to restrict the Processing of any Personal Data;
 - (E) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any Third Party;
 - (F) an objection to any Processing of Personal Data;
 - (G) any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (i) not, without the Authority's prior written consent, and subject also to Clause 24.1, make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Clause 23.2(h)(i)-(iii);
- (j) taking into account the nature of the processing, provide the Authority with full assistance in relation to either Party's obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at clause 23.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;

- (ii) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Relevant Data Protection Laws;
 - (iii) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Authority following any Personal Data Breach;
 - (v) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- (k) [without prejudice to Clause 23.2, not [without the prior written consent of the Authority]:
- (i) convert any Personal Data for "big data" analysis or purposes; or
 - (ii) match or compare any Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);

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

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

23.4 In the event that the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.

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

- (a) the use of any Sub-processor being otherwise in accordance with clause 15 and 23.7; and
- (b) the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

23.7 The Supplier shall procure that all Sub-processors:

- (a) prior to commencing the Processing of any Personal Data and/or any Sanitised Personal Data enter into a written contract in relation to the Processing with either the Authority or the

Supplier which shall include substantially the same data protection obligations on the Sub-processor as are imposed on the Supplier by these General Terms and Conditions and which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as provided at Part A of Schedule 2.8 to these General Terms and Conditions; or

- (b) insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data and/or any Sanitised Personal Data to any Off-shore Location in accordance with clause 23.8, it shall incorporate the Standard Contractual Clauses or such other mechanism as directed by the Authority to ensure the adequate protection of the transferred Personal Data and/or any Sanitised Personal Data;
- (c) act in accordance with clauses 15 and 23.

23.8 The Supplier shall not Process or otherwise transfer any Personal Data and/or Sanitised Personal Data in or to any Off-shore Location.

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

- (a) immediately inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;
- (b) provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:
 - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (c) implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Articles 32 to 34 of the UK GDPR, including by:
 - (i) pseudonymising or encrypting Personal Data and/or Sanitised Personal Data, where appropriate;
 - (ii) ensuring the on-going confidentiality, integrity and availability of Processing systems and services;

- (iii) ensuring a means to restore the availability of and access to Personal Data and/or Sanitised Personal Data in a timely manner following any physical or technical incident; and
 - (iv) having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures:
- (d) at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.

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

- (a) adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR;
- (b) designating a Data Protection Officer if required by the Relevant Data Protection Laws;
- (c) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the UK GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:
 - (i) the Processing is not occasional;
 - (ii) the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and
- (d) reporting any suspected non-compliance or actual non-compliance with this Clause to the Authority immediately upon becoming aware of such non-compliance.

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

23.12 For the avoidance of doubt, nothing in these Terms and Conditions relieves the Supplier of its own direct responsibilities and liabilities under the UK GDPR.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

- (a) Subject always to Clause 24.3 and Paragraph 13 of Schedule 2.9 (*Service Infrastructure Updating*), make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority.

- 24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 24.3 Except with the prior written approval of the other Party, neither party shall make or authorise others to make any public statement or press announcement in relation to this Agreement or its performance unless;
- (a) the Parties have first used reasonable endeavours to obtain prior written approval for the statement or announcement. Such approval is not to be unreasonably delayed or refused;
 - (b) in the case of any statement or announcement on behalf of the Authority, such statement or announcement is accurate and for parliamentary, governmental, statutory, or judicial purposes, or involves presentations relating to the Authority's experience in managing the Agreement and discussions around best practice in IT contracting, in which case no such approval shall be required;
 - (c) the Supplier shall be entitled to make a reasonable response to any statement or announcement by or on behalf of the Customer, to the extent that a response by the Supplier is required in order to protect the Supplier's legitimate corporate interests in circumstances where the Customer's statement or announcement has had or is likely to have a material adverse impact on the Supplier's business and or reputation. To the extent that the Agreement is subject to a Parliamentary related hearing which is intended to take place over a specified period of time, the Parties shall acting reasonably agree the timing of the Supplier's aforementioned right to make a statement or announcement aligned to such hearing.

SECTION G | LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or sub-contractors (as applicable) for which the Party is legally responsible;
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (iv) any other liability to the extent that it cannot be limited or excluded by Law;

- (b) the Supplier's liability in respect of any indemnities in Clause 10.9 (*Promoting Tax Compliance*), Clause 14.9 (*Employment Indemnity*), Clause 14.10 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), or
- (c) the Authority's liability in respect of any indemnities in Clause 14.9 (*Employment Indemnity*), , and Clause 19 (*IPRs Indemnity*).

Financial and other limits

25.2 Subject always to Clause 25.1 Unlimited Liability and Clause 25.6 Consequential Losses:

[Redacted]

25.3 As at the Effective Date:

- (a) in respect of any issue, including any potential breach or Claim relating to the Additional Services which were provided pursuant to the 2020 Agreement, where the relevant cause of action first arose prior to the 1st April 2023, then, subject to Clause 25.3(c), the consequences of, and any liability for, such issue (including any relevant losses or other liability arising from the same cause of action after the Effective Date) shall be dealt with and resolved pursuant to the terms of and in accordance with the 2020 Agreement;
- (b) in respect of any issue relating to the Fujitsu Services under this Agreement, where the relevant cause of action first arose on or after the 1st April 2023 then, subject to Clause 25.3(c), such issue shall be dealt with and resolved in accordance with this Agreement (including any relevant losses or other liability accruing before the Effective Date) and not under the 2020 Agreement.
- (c) If, in respect of any issue, there is ambiguity as to when a cause of action first arose and thus whether a Claim should be commenced under Clause 25.3(a) or Clause 25.3(b) then the relevant Party may plead its case in the alternative and in doing so will not prejudice the legal efficacy of the Claim in any way. Notwithstanding this right regarding the commencement of a Claim, in the situation envisaged by this Clause 25.3(c), the relevant Party shall only be entitled to proceed with one Claim under one of either Clause 25.3(a) or Clause 25.3(b).

Consequential Losses

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

- (a) any indirect, special or consequential Loss ; or
- (b) any loss of actual or anticipated profits;
- (c) any loss of revenue or turnover;
- (d) loss or damage to business opportunities;
- (e) loss or damage to goodwill; and
- (f) loss of anticipated savings

(in each case whether direct or indirect).

25.5 Notwithstanding Clause 25.4 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default

- (a) the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
- (b) notwithstanding clause 25.5 (a), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;

Conduct of indemnity claims

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

Mitigation

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

26 INSURANCE

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

SECTION H | REMEDIES AND RELIEF

27 RELIEF & COMPENSATION

Relief Events

27.1 To the extent that, as a result of the occurrence of a Relief Event, the Supplier:

- (a) is unable to achieve, or is delayed in achieving, the provision of the Services or the relevant part of the Services (as applicable);
- (b) fails to meet any planned Milestone or to comply with any Plan, which shall include the occurrence of any Plan Delay; and/or
- (c) the Supplier is otherwise unable to comply with any or all of its obligations under this Agreement,

(each a "Supplier Non-Performance"), then the Supplier is entitled to relief from its obligations under this Agreement and, where the Supplier incurs any costs in relation to the Relief Event, to claim Relief Event Compensation, in accordance with this Clause 27.

27.2 To claim relief and/or Relief Event Compensation in respect of a Relief Event, the Supplier shall, as soon as reasonably practicable, and in any event within thirty (30) Working Days (or such other period as the Parties may agree) after becoming aware that the Relief Event has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer a notice (a "Relief Notice") setting out details of:

- (a) the Supplier Non-Performance and the relief and/or Relief Event Compensation claimed by the Supplier;
- (b) any extension of the time claimed for the relevant Milestone or compliance with the relevant Plan;
- (c) the Relief Event and its effect, or likely effect, on the Supplier's ability to meet its obligations under the Agreement; and
- (d) any steps which the Customer can take to mitigate the consequences and impact of the Relief Event.

27.3 The Supplier shall use Commercially Reasonable Efforts to mitigate the costs incurred or expected to be incurred in connection with the Relief Event, and shall be entitled to claim Relief Event Compensation only where it can demonstrate that it is, has been, or will be unable to mitigate the relevant costs, having complied with its obligation under this Clause 27.1.

27.4 Following the receipt of a Relief Notice, the Customer shall, as soon as reasonably practicable, consider the nature of the Supplier Non-Performance and the alleged Relief Event and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Relief Event and its entitlement to relief and/or Relief Event Compensation, consulting with the Supplier where necessary. Any dispute as to any submitted Relief Notice shall be submitted for resolution in accordance with the Escalation Process. Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

27.5 If the Customer disputes any relief or Relief Event Compensation claimed by the Supplier, then, until resolution of such dispute, the Supplier shall not be obliged to incur any additional costs arising as a result of the relevant Relief Event, unless payment of such costs has been expressly agreed by the Parties in writing.

27.6 Upon the Customer being notified of a Relief Event and the relief and/or Relief Event Compensation claimed by the Supplier in accordance with Clause 27.1 (b), but subject to subsequent adjustment following the resolution of any dispute referred to the Escalation Process in accordance with Clause 27.1 (d):

- (a) the Customer shall not be entitled to exercise its rights to Terminate this Agreement in respect of the applicable Supplier Non-Performance, or to levy Liquidated Damages or Service Credits in respect of such Supplier Non-Performance;

- (b) if the Relief Event has caused, or will cause, a Plan Delay, the applicable Plan shall be revised to take account of the Plan Delay which has arisen or shall arise as a consequence of the Relief Event, and there shall be an allowance of such time as shall be reasonable for such event taking into account the likely effect of the Plan Delay;
- (c) the Customer shall give the Supplier such other reasonable relief from its obligations under the Agreement, as has been reasonably requested by the Supplier; and
- (d) the Customer shall pay to the Supplier any Relief Event Compensation that the Supplier has incurred or will incur.
- (e) Unless otherwise expressly stated otherwise in this Agreement, both Parties shall use their Commercially Reasonable Efforts to mitigate the effects of a Relief Event.
- (f) The Supplier shall make the Customer aware of any further information relating to the Relief Event that it receives or becomes aware of, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading, including any new information regarding details of actions that the Customer could take to mitigate or remedy the Relief Event.
- (g) This Clause 27.1 sets out an exclusive mechanism by which the Supplier shall be entitled to claim (and the Customer shall be required to pay) any additional costs incurred by the Supplier in providing the Services due to circumstances constituting a Relief Event. The Supplier may bring (as a claim for damages to which Clause 25 applies) claims for other Losses suffered by it in such circumstances.

Early Warning

- 27.7 Without prejudice to Clause 27.1 above and the Supplier's obligations under this Agreement, the Supplier will communicate to the Customer in writing on becoming aware that it has not performed, will not be able to perform, or will be delayed in its performance of, its obligations in accordance with the terms of the Agreement ("Early Warning").
- 27.8 The Early Warning shall provide as much detail as is reasonably available to the Supplier so as to describe the affected elements of its obligations, the reason for the disruption and the steps the Supplier will undertake to prevent the disruption and/or mitigate the effects of the disruption.
- 27.9 The Supplier will provide regular status updates and will, in any event, immediately notify the Customer in the event of a material change in circumstances.
- 27.10 Any failure by the Supplier to comply with the requirements of this Clause- Early Warning - will not prevent the Supplier from claiming relief and/or Relief Event Compensation from the Customer in respect of such matter in accordance with Clause 27.1.
- 27.11 The Supplier shall not be entitled to claim relief and/or Relief Event Compensation from the Customer under this Clause 0.

28 RECTIFICATION PLAN PROCESS

28.1 Without limitation to this Clause 28 and without prejudice to the Authority's rights under this Agreement, if there is a Performance Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;
- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the Key Performance Indicators and Subsidiary Performance Indicators as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

Submission of the draft Rectification Plan

28.2 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 28.1(*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

28.3 The draft Rectification Plan shall set out:

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

28.4 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

28.5 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or

(d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

28.7 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or in the event of other Material Default.

29 **Not used**

30 **Not used**

31 **AUTHORITY CAUSE**

Authority Cause

31.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Fujitsu Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Agreement pursuant to Clause 34.1 (*Termination by the Authority*) where the Supplier Non-Performance constitutes a Performance Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*);

- (C) the Authority shall not be entitled to withhold and retain any compensation for unacceptable performance failures; and
- (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Fujitsu Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

32 FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated, but the Supplier has failed to do so; or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

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

- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 34.1 (*Termination by the Authority*) or Clause 34.2 (*Termination by the Supplier*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Clause 30 (*Step-in Rights*) as a result of such failure;
 - (B) to receive payments for delay to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C) to receive Service Credits, and or to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*) or withhold and retain any of the Service Charges as compensation for unacceptable performance failure to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

33 **Not used**

SECTION I | TERMINATION AND EXIT MANAGEMENT

34 TERMINATION RIGHTS

Termination by the Authority

34.1 Without prejudice to any other rights or remedies it may have, the Customer, by giving written notice to the Supplier, may terminate this Agreement immediately as of the date specified in the notice of Termination if any of the following circumstances occur or exist:

- (i) the Supplier commits a Material Default, which is not cured:
 - (A) within thirty (30) days after written notice of the Material Default from the Customer to the Supplier, unless a longer period is agreed by the Customer in accordance with Clause 34 .1 i) (B) below; or
 - (B) where (following receipt of the written notice referred to in Clause 34 (i) (A) above) a remedial plan is proposed by the Supplier and agreed by the Customer, within the timetable agreed between the Parties and set out in such remedial plan;
 - (ii) the Supplier commits a Material Default of this Agreement which is not capable of being cured;
 - (iii) the Supplier commits repeated breaches of its obligations under this Agreement (whether of the same or different obligations and regardless of whether these breaches are cured), the cumulative effect of which is a Material Default;
 - (iv) the Supplier, or any Affiliate of the Supplier brings the Customer into disrepute by engaging or having engaged in significant non-fulfilment of obligations relating to the payment of taxes in the United Kingdom or any member of the European Union, the United States of America or Japan.
- (b) Without prejudice to any of the rights or remedies it may have, the Customer, by giving written notice to the Supplier, may terminate this Agreement immediately, as of the date specified in the notice of Termination upon the occurrence of an Insolvency Event.
- (c) If a Force Majeure Event endures for a continuous period of more than ninety (90) days and this Agreement shall terminate on the date specified in the Termination Notice.

Termination by the Supplier

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

- (a) [Redacted]
- (b) and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (c) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

35 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

35.1 The provisions of Clauses: 1 (*Definitions and Interpretations*) 5.8 (*Specially Written Software warranty*), 9 (*Assets Equipment Maintenance and Accommodation*), 10.5 and 10.6 (*Set-off and Withholding*), 10.9 and 10.14 (*Promoting Tax Compliance*), 12 (*Records, Reports, Audits and Open Book Data*), 14.9 (*Employment Indemnity*), 14.10 (*Income Tax and National Insurance Contributions*), , 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 20 (*Authority Data and Security Requirements*), 21 (*Confidentiality*), 22(*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 35 (*Consequences of Expiry or Termination*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 45 (*Service Recipients*), 48 (*Disputes*) and 49 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Accrued Rights

35.3 The Termination (including expiry) of this Agreement shall not affect any accrued rights of either Party.

15. Payments by the Supplier

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

SECTION J | MISCELLANEOUS AND GOVERNING LAW

36 COMPLIANCE

Health and Safety

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

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

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

Equality and Diversity

36.3 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act

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

Modern Slavery

36.5 The Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking law, statutes and regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015;
- (c) make reasonable enquiries to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences;
- (d) in its contracts with Sub-contractors include anti-slavery and human trafficking provisions that are substantially the same as the provisions in this contract;
- (e) notify the Authority immediately upon becoming aware of any actual or suspected breach of its obligations under Clause 36.5(a) and/or (b), details of the breach and the mitigation action it has taken or intends to take in order to:

- (i) remedy the breach; and
- (ii) ensure future compliance.

- 36.6 The Supplier shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that human trafficking is not taking place in any of its supply chains or in any part of its business and a certificate of compliance.
- 36.7 If the Supplier commits a material breach of Clause 36.5:
- (a) in the case of a material breach of Clause 35.5 (a),(b) or (c) such material breach shall be deemed to be a Material Default and shall entitle the Authority to terminate in accordance with Clause 34.1 and
 - (b) in the case of any other material breach, such material breach may form the basis for termination in accordance with Clause 34.1 in appropriate circumstances.

37 ASSIGNMENT AND NOVATION

- 37.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 37.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,
16. and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.
- 37.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 37.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body in the same way that the Authority has right of termination for an Insolvency Event applicable to the Successor Body).

38 WAIVER AND CUMULATIVE REMEDIES

- 38.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right

or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 38.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

39 RELATIONSHIP OF THE PARTIES

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

40 PREVENTION OF FRAUD AND BRIBERY

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

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

- 40.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 40.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 40.3(a) and make such records available to the Authority on request; and
- (d) comply with any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

- 40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 40.1 and/or 40.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 40.6 If the Supplier is in Default under Clauses 40.1 and/or 40.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

41 SEVERANCE

- 41.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 41.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 41.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the

matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 41.3.

42 FURTHER ASSURANCES

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

43 ENTIRE AGREEMENT

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

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

43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.

44 THIRD PARTY RIGHTS

44.1 Nothing in this Agreement shall be deemed to grant any rights or benefits to any person other than the Parties or their respective successors in title or assignees (referred to in this Clause as a “third party”), or entitle any third party to enforce any provision hereof and the Parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

44.2 Any amendments or modifications to this Agreement may be made by the Parties without the consent of any Third Party .

45 SERVICES RECIPIENTS

General

45.1 The Supplier shall provide the Services for the benefit of the Customer and, to the extent specified in the Agreement (including Schedule 18 (*Services Recipients*)), indirectly via the Customer to the Services Recipients. Prior to provision of the Services for the benefit of the Services Recipients they shall have first each acknowledged that in consideration of the provision to the Services Recipient of the Services, the Services Recipient has agreed to be bound by the terms of this Agreement.

45.2 The Parties agree that Services Recipients are not third party beneficiaries for the purposes of this Agreement and are not intended to have any right to enforce any of the provisions of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

45.3 To the extent the Supplier performs the Services for the benefit of Services Recipients:

- (a) the Customer will be the Supplier's single point of contact regarding such Services. All instructions in respect of Services Recipients shall be given on their behalf by the Customer who has the Services Recipients' ostensible authority in respect of such matters;
- (b) the Services are to be provided to Services Recipients in the United Kingdom, save where a Services Recipient specified in Schedule 18 (*Services Recipients*) is specified to be located outside of the United Kingdom, whereby the Customer gives its express permission for the Supplier to provide such Services for that Services Recipient who is outside of the United Kingdom. All restrictions regarding provision of data or the Services outside of the United Kingdom set out in this Agreement shall not apply to the provision of data or Services to such Services Recipient in the territory identified in Schedule 18 (*Services Recipients*) for that Services Recipient; and
- (c) the Customer will be liable to the Supplier for the acts or omissions of the Services Recipients, including, to the extent they breach the Customer's obligations under this Agreement or obligations that are otherwise stated in this Agreement to apply to such Services Recipients (other than the obligation to pay the Charges which remains with the Customer), as if they were acts or omissions of the Customer.

45.4 By allowing a Services Recipient to receive the Services, the Customer is deemed to have confirmed that the Services Recipient has agreed to observe the terms of this Agreement and in particular the terms of this Clause 44.

45.5 The Customer shall ensure that all Services Recipients are subject to a duty of confidentiality to the Supplier which is at least the same as the Customer's duty of confidentiality to the Supplier under this Agreement.

Addition and Removal of Services Recipients

45.6 The Customer may add new Services Recipients to, or remove existing Services Recipients from, the scope of this Agreement by providing written notice to the Supplier and updating Schedule 18 (*Services Recipients*), including confirmation that, in consideration of the receipt of the benefit of the Services, the Services Recipient has agreed to be bound by the terms of this Agreement. The Supplier may reject the addition of a Services Recipient if the provision of the Services for the benefit of that proposed new Services Recipient would reasonably be expected to result in:

- (a) a breach of an applicable Law;
- (b) the imposition of additional or different applicable Law other than the Laws of England;
- (c) access to or use of the Services by a competitor of the Supplier; or
- (d) a Change other than the addition of the Services Recipient.

Claims by Services Recipients

45.7 All Claims in connection with the Services or otherwise in connection with this Agreement from any of the Services Recipients against the Supplier in respect of a breach of contract, tort (including negligence), breach of statutory duty or otherwise, however arising from this Agreement, shall be brought, to the extent permissible in Law, by the Customer itself on behalf of the Services Recipient

and, for these purposes, any liability of the Supplier to Services Recipients under or in connection with this Agreement shall be deemed to be liability to the Customer, provided that:

- (a) such liability shall be subject to Clause 25 (Limitations on Liability); and
- (b) the Customer complies with its indemnity obligations under Clause 45.8 and 45.9.

45.8 Where a Services Recipient brings a Claim directly against the Supplier and the Customer has already been awarded damages from, or has agreed a settlement of said Claim with the Supplier on behalf of that Services Recipient then the Customer will indemnify the Supplier against that part of any Claim brought by the Services Recipient to the extent that the Customer has already recovered the said part from the Supplier or compromised or waived its Claims.

45.9 Where a Services Recipient brings a Claim directly against the Supplier in breach of this Clause 45, the Customer will indemnify the Supplier against any such Claim and all reasonable costs and expenses incurred by the Supplier in defending such Claim.

45.10 The Customer's liability under the indemnities provided by the Customer under Clauses 45.8 and 45.9 shall be subject to the limitations of the Customer's liabilities under Clause 25 (Limitations on Liability).

46 **NOTICES**

46.1 Any notices sent under this Agreement must be in writing.

46.2 Subject to Clause 46.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

providing proof of delivery.	Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	
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17.

46.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

- (i) in the case of formal or legal notices to the Customer, copied to the Customer's legal department at the following address/electronic mail:

[Redacted]

- (ii) in the case of formal or legal notices to the Supplier, copied to the Supplier's legal department at the following address/electronic mail:

[Redacted]

46.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 46.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 34.2 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

46.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 46.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

46.6 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.4 (*Dispute Resolution Procedure*)).

47 NON-SOLICITATION

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

48 DISPUTES

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

49 GOVERNING LAW AND JURISDICTION

- 49.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 49.2 Subject to Clause 48 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of)	[Redacted]
FUJITSU SERVICES LIMITED by its duly)	
authorised representative:)	
) Signature:	
	Name (block	
	capitals):	
		Authorised
		Representative

SIGNED for and on behalf of
*The Commissioners for His Majesty's
Revenue and Customs:*

)
)
)
) Signature:

Name (block
capitals):

Position:

[Redacted]



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (December 2020)

SCHEDULE 1 | Definitions

SCHEDULE 1 | Definitions

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

Note that where in a Schedule that was previously used in connection with the Additional Services and or the Expired Services then unless otherwise provided in this Schedule 1 (Definitions) to this Agreement or the context otherwise requires, capitalised expressions shall have the meanings defined (1) in the 2020 Agreement in respect of the Additional Services; and (2) if absent from that agreement as defined in the 2004 Agreement in respect of the Expired Services.

“2004 Agreement”	means the agreement between the Authority and the Supplier dated 5 January 2004 (as amended from time to time) for the provision by the Supplier to the Customer of various IT and related services which expired on 30th June 2022.
“2022 Extension”	means the extension of the Term of the 2004 Agreement to 30 June 2022.
“Accenture”	means Accenture UK Limited (company number 4757301) (previously known as Anderson Consulting) whose principal place of business is at 30 Fenchurch Street, London EC3M 3BD.
“Accenture Materials”	means any Material, the Intellectual Property Rights in which are owned by Accenture or any Accenture Group Company, which is used to provide, or which forms part of, the services requirements under the earlier agreement with Accenture, or which forms part of that agreement and shall include all Modifications to such Material.
“Accenture Software”	means any Software, the Intellectual Property Rights in which are owned by Accenture or any Accenture Group Company, which is required by the Supplier to provide the Fujitsu Services
“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements.
“Accreditation Process”	means the agreed process to achieve the security standards set out in Schedule 2.4 (<i>Security Management</i>).
“Acquired Rights Directive”	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’

	rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event.
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“Agile Project”	means a Project that uses agile methods to deliver IT solutions with an iterative and collaborative approach as described in the Policies and Procedures Manual.
“Agreement”	means the clauses of this agreement together with the Schedules and annexes to it.
“Allowable Assumptions”	means the assumptions set out or made in Schedule 7.1 (<i>Charges and Invoicing</i>) and or the Fujitsu Services Pricing File.
“Alternative Dispute Resolution”	means the process set out in Schedule 8.1 (<i>Governance</i>).
“Annex”	means an annex to a Schedule.
“Appropriate Measures”	Means the appropriate technical and organisational measures referred to in Clause 23.2 (c) of the Terms and Conditions.
“Assets”	means the Equipment, Software, Material and Facilities used by the Supplier during the Term to provide the Fujitsu Services.
“Audit”	means any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).

“Audit Agents”

means:

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

successors or assigns of any of the above.

“Audit Rights”

means the Audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*).

“Authority Assets”

means the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services.

“Authority Background IPRs”

means:

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

but excluding IPRs owned by the Authority subsisting in the Authority Software.

“Authority Cause”

means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

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

“Authority Data”	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none">(i) supplied to the Supplier by or on behalf of the Authority; and/or(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; <p>(b) any Personal Data; or any Sanitised Personal Data.</p>
“Authority Materials”	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none">(a) are owned or used by or on behalf of the Authority; and(b) are or may be used in connection with the provision or receipt of the Services, <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
“Authority Premises”	<p>means the premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them).</p>
“Authority Representative”	<p>means the representative appointed by the Authority pursuant to Clause 11 (<i>Representatives</i>).</p>
“Authority Requirements”	<p>means the requirements of the Authority set out in Schedules 2.1 (<i>Services Description</i>), 2.2 (<i>Performance Levels</i>), 2.3 (<i>Standards</i>), 2.4 (<i>Security Management</i>), 2.5 (<i>Insurance Requirements</i>), 8.2 (<i>Reports and Records</i>), 8.5 (<i>Exit Management</i>) and 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>).</p>
“Authority Responsibilities”	<p>means the responsibilities of the Authority specified in Schedule 3 (<i>Authority Responsibilities</i>).</p>

“Authority Software”	means the software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services.
“Authority System”	means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services.
“Authority to Proceed” or “ATP”	means the authorisation to the Supplier to commence the provision of the relevant Services in accordance with Schedule 6.3 (Projects and Ordering).
“Availability”	has the meaning given in the method of calculation for a relevant Service Level in Schedule 2.2 (<i>Performance Levels</i>) and is calculated by reference to whether something for which the Supplier is responsible is available or unavailable and, unless otherwise stated, disregarding any lack of availability from other causes. “Available”, “Unavailable” and “Unavailability” shall be construed accordingly.
“Average Service Line Target Margin”	means the mean of the target margin for Service Lines for the Service Line in question over the Term as a whole as reflected in the Fujitsu Services Pricing File.
“Background IPRs” or “Supplier Background IPR”	means the IPR owned by or licenced to the Supplier prior to the Effective Date and or created or developed or licenced by the Supplier after the Effective Date independently of this Agreement.
“Basic Check”	means the level of assurance as to the trustworthiness and integrity of individuals, derived by applying the appropriate procedures set out in the Manual of Protective Security.
“Business Application”	means a Software application that supports a business process or function.
“Board”	means the Supplier’s board of directors.

“Board Confirmation”	means the written confirmation from the Board in accordance with paragraph 8 of Schedule 7.4 (<i>Financial Distress</i>).
“Bonus PGS Relief”	has the meaning set out in Section 1.17 of Schedule 7.3 (Value for Money).
“C&AG” or “Comptroller and Auditor General”	has the meaning set out in Schedule 7.5 (Financial Reports and Audit Rights).
“Cabinet Office Markets and Suppliers Team”	means the UK government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function.
“CCN”	means a change control note in the form agreed by the Parties in accordance with Schedule 8.3 (<i>Change Control Procedure</i>).
“CEDR”	means the Centre for Effective Dispute Resolution.
“Central Government Body”	means 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: <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”	means any change to this Agreement.
“Change Authorisation Note”	means a form setting out an agreed Contract Change which shall be in the form agreed between the Parties in accordance with Schedule 8.3 (<i>Change Control Procedure</i>).
“Change Control Procedure”	means the procedure for changing this Agreement set out in Schedule 8.3 (<i>Change Control Procedure</i>).
“Change in Law”	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date.

“Change of Control”	means that Control of the Supplier is acquired by any entity (other than a Supplier Group Company) by way of either a single transaction or a series of related transactions.
“Change Request”	means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (<i>Change Control Procedure</i>).
“Charges”	means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge.
“Claim”	means any claim, demand, proceeding, suit or other action.
“Commercial Off The Shelf” or “COTS”	means a commercially available Software package (commonly referred to or known as shrink wrap Software) which can be purchased and/or installed without reference to the original software production company.
“Commercially Sensitive Information”	[Redacted]
“Commercially Reasonable Efforts”	means taking such steps and performing them in such a way as a well-managed organisation would undertake with the aim of achieving a particular desired result for its own benefit, assuming such organisation was acting in a commercial, prudent and reasonable manner.
“Confidential”	means, where used in relation to protective marking, a classification of such marking as described in the “Manual of Protective Security” published by the Cabinet Office.
“Confidential Information”	[Redacted]
“Connected Company”	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person.
“Contract Change”	means any change to this Agreement other than an Operational Change.
“Contracts Finder”	means the online government portal which allows

“Contract Management Team”

suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contracts Regulations 2015. means the team of Customer staff that is designated by the Customer to manage this Agreement for the Customer during the Term, or the team of Supplier Personnel that is designated by the Supplier to manage this Agreement for the Supplier during the Term, as applicable.

“Contracting Authority”

means a contracting authority as defined in the Public Services Contracts Regulations 2015.

“Contract Year”

means the 12 month period commencing on, and including, the 1st Day of July in each year and each immediately successive period of twelve (12) months.

“Control”

means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly.

“Controller”

has the meaning given in the Relevant Data Protection Laws.

“Corporate Change Event”

means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;

- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and

Wales.

“Corporate Resolution Planning Information”

means, together, the:

- a) Group Structure Information and Resolution Commentary; and
- b) UK Public Sector and CNI Contract Information.

“Costs”

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

“Costs of Capital”

[Redacted]

“Counter Notice”

has the meaning given in Schedule 8.4.

“Counter Terrorist Check” or “CTC”

means the level of assurance as to the trustworthiness and integrity of individuals, derived by applying the appropriate procedures set out in the Manual of Protective Security.

“CPI”

means the Consumer Prices Index published monthly by the Office for National Statistics.

“Critical KPI Failure”

shall have the meaning given, in relation to the relevant Key Performance Indicator, in Schedule 2.2 (*Performance Levels*).

“Crown Hosting Infrastructure”

means the Customer’s Crown Hosting infrastructure within the Customer’s Crown Hosting data centres.

“Crown Hosting OSIs”

means the Operating System Instances that form part of the Customer’s Crown Hosting Infrastructure.

“Crown Hosting Services”

means the services which are outside of this scope of this Agreement under which the Authority uses Crown Hosting.

“CRTPA”

means the Contracts (Rights of Third Parties) Act 1999.

“Customer Accommodation”

means the customer owned or operated premises made available to the Supplier in order to provide the Services, as set out in Schedule 2.6 (*Accommodation*).

“Customer Assets”

means any assets owned or operated by the Customer and which are made available to the Supplier in connection with this Agreement.

“Customer Audit Representative”	means any representative or employee of the Customer, including the IAO and the DSU, or any third party appointed by the Customer to conduct an audit on its behalf.
“Customer Contract Manager”	means such individual as the Customer shall nominate, from time to time, to manage and control the relationship with the Supplier.
“Customer Data”	means all data and written information relating to the Customer, Services Recipients and/or any other Government Department which is provided to or created by or on behalf of the Supplier in the course of providing the Services, including data or information about any of their operations, facilities, personnel, assets, products, programs, and the Services, but excluding HMRC Customer Data.
“Customer Data Protection Representative”	means an individual or individuals nominated by the Customer from time to time to review and manage data protection in relation to this Agreement.
“Customer Dependencies”; “Authority Dependencies; “Authority Responsibilities; or “Customer Responsibilities”	means the Customer obligations and Authority Responsibilities listed in Schedule 3 (<i>Authority Responsibilities</i>) and any other dependencies on the Customer expressly stated as such in this Agreement.
“Customer’s Internet Site Privacy Policy”	means the Customer’s internet site privacy policy (as amended from time to time).
“Customer Material”	means any Material, the Intellectual Property Rights in which are owned by the Customer or any other Government Department, which is used in conjunction with the Services, and shall include all Modification to such Material.
“Customer Proposed Determination”	has the meaning given in Schedule 8.1 (<i>Governance</i>).
“Customer Report”	means any document, format of data or information update (whether electronic or paper) to be provided to the Supplier by the Customer from time to time, on a regular or ad-hoc basis, for the purposes of reporting in connection with the provision of the Services, including the reports listed in Schedule 8.2 (<i>Reports and Records</i>).

“Customer Software”	means any Software, the Intellectual Property Rights in which are owned by the Customer, any Services Recipient or any other Government Department or agency, which is used in conjunction with the Services, and shall include all Modifications to such Software.
“Customer Third Party Software”	means the Third Party Software which is licensed to the Customer by third parties, and which includes such Software licensed pursuant to any Customer third party contracts, and all Modifications to such Software.
“Customer Vacation Notice”	has the meaning given in Schedule 2.6 (<i>Accommodation</i>).
“Crypto Custodian”	means an individual appointed to account for all encryption equipment and encryption key material.
“Data Centre”	means Facilities or other premises housing the Technical Infrastructure and associated infrastructure.
“Data Centre Service”	means the Fujitsu Services provided as described in Schedules 2.1 Services Description and Schedule 4.1 and previously known as S04 Data Centre Operations in the 2004 Agreement and 2020 Agreement.
“Data Guardian”	means such individual that the Customer confirms to the Supplier in writing as having authority for Customer Data and HMRC Customer Data.
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the processing on the protection of Personal Data.
“Data Protection Officer”	has the meaning given in the Relevant Data Protection Laws.
“Data Subject”	has the meaning given in the Relevant Data Protection Laws.
“Data Subject Request”	means a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data.

“Data Subject Access Request”	means a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data.
“Deductions”	means all Service Credits, Compensation for Unacceptable Performance Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement.
“Default”	means, in relation to either Party (including its employees, agents and subcontractors), any breach of the obligations of that Party (including fundamental breach or breach of a fundamental term) or failure by that Party to perform such an obligation or any negligent or criminal act or omission of that Party, in connection with or in relation to the subject-matter of this Agreement.
“Delivery Proposal”	has the meaning given in Schedule 6.3 (<i>Projects and Ordering</i>).
“Departmental IT Security Officer”	means the officer appointed by the Customer and responsible for departmental IT security affairs.
“Developed Vetting”	means the level of security vetting clearance that the Manual of Protective Security defines as Developed Vetting.
“Disclosing Party”	has the meaning given in Clause 21 (<i>Confidentiality</i>).
“Disclosing Party Group”	means: <ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement.
“Dispute”	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by

	reference to the Dispute Resolution Procedure.
“Dispute Notice”	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute.
“Dispute Resolution Procedure”	means the dispute resolution procedure set out in Schedule 8.4 (<i>Dispute Resolution Procedure</i>).
“Due Diligence Information”	means any information supplied to the Supplier by or on behalf of the Authority prior to the date of signature.
“Early Warning”	has the meaning given in Clause 27.7 of the Terms and Conditions.
“Effective Date”	means 1 st April 2023.
“EIRs”	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations.
“Electronic Folder – ICLipse Application” or “ICLipse Application”	[Redacted]
“Emergency Maintenance”	<p>means ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault.
“Employee Liabilities”	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in

relation to the following:

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

any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

“Employment Regulations”

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

“End-User” or “User”

means users of the Services, including employees of the Customer and Services Recipients but excluding HMRC Customers.

“End Of Service Life”

means the manufacturer’s or supplier’s stated service or support life for a component, excluding any additional, extended or enhanced support periods.

“Environment”

means an environment for running applications, provided by an Operating System Instance.

“Equipment”

means the equipment (including computer hardware), and any associated peripherals and connecting equipment, either owned or leased by the Supplier and used in the provision of any of the

	Services.
“Escalation Process”	means the escalation and dispute resolution process set out in Schedule 8.1 (<i>Governance</i>).
“Estate”	means the estate on which the NEP Premises are situated.
“Exit Management”	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>).
“Exit Plan”	means the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>).
“Expedited Dispute Timetable”	means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>).
“Expert”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>).
“Expert Determination”	means the process described in Paragraph 6 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>).
“Extension Period”	has the meaning given in Clause 4 Term.
“Facilities” or “Facility”	means any office space, furnishings, fixtures and/or services.
“Failure Severity Level”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Fair Market Value”	means the transfer value of any applicable assets, as determined with reference to assets of a similar in type and condition, bought and sold in ‘arms length’ transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties.
“FAST” or “FAST Cloud Services”	[Redacted]
“Financial Distress Event”	means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial</i>

Distress).

“Financial Distress Remediation Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs.
“Financial Model”	means the Pricing Model attached to Schedule 7.1 (<i>Charges and Invoicing</i>) for the Fujitsu Services and Fujitsu Project Services.
“Financial Reports”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
“Financial Year” or “FY”	means the one year period from 1 April to 31 March inclusive.
[Redacted]	[Redacted]
“FM Services”	means the facilities management services to be provided by or on behalf of the Customer in respect of Customer Accommodation, as further described in Schedule 2.6 (<i>Accommodation</i>) but excluding any exceptions listed.
“FM Services Contractor”	means, in relation to STEPS Premises, Mapeley, and in relation to NEP Premises, NEP, or in either case any alternative accommodation services provider appointed by the Customer.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act.
“Force Majeure”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel

or any other failure in the Supplier's or a Subcontractor's supply chain. Force Majeure also includes:

- (i) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, civil commotions;
- (ii) failure by any statutory undertaking, utility company, local authority or other like body to carry out works or provide services;
- (iii) any accidental loss or damage to facilities used to perform the Services;
- (iv) [Redacted]
- (v) any blockade or embargo; and
- (vi) any: official or unofficial strike; lockout; or go slow, or other dispute, generally affecting the information technology sector (but excluding such events targeted specifically at any Subcontractor or the Supplier).

"Force Majeure Event"

means an event of Force Majeure.

"Force Majeure Notice"

means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

"FTE"

means full time equivalent.

"Fujitsu"

means Fujitsu Services Limited (as defined in the Terms and Conditions) or its relevant affiliate.

"Fujitsu Services"

means the services that the Supplier is agreeing to provide to the Authority under this Agreement excluding the Fujitsu Project Services.

"Fujitsu Services Pricing File"

means the pricing file and financial pricing model agreed between the Parties and attached to Schedule 7.1 as amended by agreement between the Parties and or in accordance with Schedule 7.1 (*Charges and Invoicing*) and detailing the Charges for the Fujitsu Services and Fujitsu Project Services.

"Fujitsu Project Services"

means the project services that the Supplier will

	provide the Authority by agreement as a result of this Agreement.
“Furniture and Office Equipment”	has the meaning given in Schedule 2.6 (<i>Accommodation</i>).
“UK GDPR” or “GDPR”	means, the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time.
“Generally Accepted Accounting Practice” or “GAAP”	means, in relation to a company, accounting principles, concepts, bases and policies generally adopted and accepted in the United Kingdom.
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply.
“Good Industry Practice”	means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced provider of information, communication and technology services and information systems similar to the services provided in connection with the provision of the Services seeking in good faith to comply with its contractual obligations and complying with relevant Law.
“Governance Principles”	has the meaning set out in Schedule 8.1 (<i>Governance</i>).
“Government Departments”	means any UK Government department and/or agency authorised to perform or procure any goods or services on behalf of the UK Government.
“Health and Safety Policy”	means the health and safety policy of the

Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

“HMRC”

means HM Revenue & Customs.

“HMRC Customer Data”

means information about any HMRC Customer, including information about any matter relevant to tax or duties or tax credit (including data relating to the payment or calculation of any tax or duties or national insurance, or the calculation or entitlement to any benefit or tax credit) in the case of any identifiable person, or any information capable of identifying any such person together with all other information protected by Section 182 of the Finance Act 1989, Section 18 of the Commissioners for Revenue and Customs Act 2005, Section 6 of the Taxes Management Act 1970 and/or Section 123 of the Social Security Administration Act 1992.

“IAO”

means the Customer’s Internal Audit Office.

“Impact Assessment”

has the meaning given in Schedule 8.3 (*Change Control Procedure*).

“Impacted Customer Accommodation”

has the meaning set out in Schedule 2.6 (*Accommodation*).

“Impact Analysis”

means an analysis of the impact or potential impact of a change or request for Change.

“Incident”

means an unplanned interruption to the provision of something for which the Supplier is responsible or a material quality reduction to the same.

“Incident Resolution”

means that the impact of an Incident has been ended or sufficiently mitigated to allow the resumption of the provision of the relevant Fujitsu Services which gave rise to the Incident and or the ending of the material quality reduction to the same. Such resolution may be a temporary workaround or a permanent repair or replacement of the thing giving rise to the

Incident.

“Indemnified Person”

means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement.

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).

“Initial Term”

means the period of two (2) years from and including the Effective Date.

“Initial Supplier Proposal” or “ISP”

means the document by that name produced by the Supplier for approval by the Customer setting out the initial view of the parameters for a proposed Project, including in particular the proposed commercial treatment of a Project and proposed basis of charging for that Project.

“Insolvency Event”

means the occurrence of any act or event of insolvency or corporate action, legal proceedings or other procedural step taken in respect of the Supplier, including:

- (a) any meeting of creditors of the Supplier being convened or held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to the Supplier or any application for an interim order (including an interim administration order) or moratorium being made;
- (b) a liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or person with similar powers taking possession of or being appointed over, or any distress, attachment, sequestration, execution or other process being levied or enforced (and not being discharged within twenty-eight (28) days) upon the whole or any substantial part of the assets of the

- Supplier (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Customer (such approval not to be unreasonably withheld or delayed), with the resulting entity assuming all the obligations of the Supplier);
- (c) the Supplier ceasing or threatening to cease to carry on business, or admitting in writing its inability to pay or being or becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or suspending or threatening to suspend payment with respect to all or any class of its debts, or becoming insolvent or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
 - (d) a petition being presented and (other than in the case of an administration petition) not being dismissed within twenty-eight (28) days of presentation thereof, or a meeting being convened for the purpose of considering a resolution or the winding-up or dissolution of the Supplier (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Customer (such approval not to be unreasonably withheld or delayed) with the resulting entity assuming all the obligations of the party in question);
 - (e) the enforcement of a Security Interest (including the holder of a qualifying floating charge giving a notice of intention to appoint an administrator or filing a notice of appointment with the court) over any assets of that person;
 - (f) to the extent that such an act is not specified in sub- paragraphs (a) to (e) above, any legal process or proceeding which is instituted in relation to that person in connection with the insolvency of that person or the inability of that person to pay its debts as they fall due, provided that such process or proceeding is of equivalent or greater seriousness to

- the acts of insolvency so specified in paragraphs (a) to (e) above; or
- (g) if the Supplier suffers any event analogous to any of the foregoing in any jurisdiction to which the Supplier is incorporated or resident or subject (including a filing under Chapter 11 or 12 of the US Bankruptcy Code).

“Instruction to Proceed”

means a formal sign-off by an authorised representative of the Customer’s Contract Management Team which authorises the Supplier to proceed with the next stage of a Project.

“Intellectual Property Rights”

means patents (including patent applications), registered designs, trade marks and service marks (whether registered or otherwise), copyright, database rights, design rights, moral rights and other intellectual property rights, including in other jurisdictions that grant similar rights as the foregoing) including those rights subsisting in inventions, drawings, performances, software, semiconductor topographies, improvements, discussions, business names, goodwill and the style of presentation of goods or services, and in the applications for the protection thereof throughout the world.

“Intruder Detection Service” or “IDS”

means the intrusion detection service provided in connection with Service Line S04 to meet the Customer’s requirements in relation to intrusion detection.

“IPRs Claim”

means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any relevant Intellectual property Rights save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement.

“ISA”	means the Information Technology Services Agreement between the Former HMCE and the ISA Supplier dated 25 August 1999, including all subsequent amendments and addenda thereto relating to the provision of the ISA Services.
“Issue Statement”	has the meaning given in Section 5.7 of Schedule 8.1 (<i>Governance</i>).
“IT”	means information and communications technology.
“IT Environment”	means the Authority System and the Supplier System.
“IT Estate”	means Customer Accommodation facilities provided by the Customer or any third party on behalf of the Customer for use in the provision of the Services.
“IT Estate Accommodation Business Continuity Manager”	means such person as shall be appointed by the Customer pursuant to Schedule 2.6 (<i>Accommodation</i>). from time to time.
“Joint Partnership Board”	means a team of people from the Customer and the Supplier that is designated to manage the strategic relationship between the Parties.
“Key Business Event” or “KBE”	means a business critical, public facing Customer business process or event as described at Schedule 2.2 (<i>Performance Levels</i>).
“Key Performance Indicator” or “KPI”	means the key performance indicators set out in Schedule 2.2 (<i>Performance Levels</i>).
“Key Personnel”	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.4 and 14.5 (<i>Key Personnel</i>).
“Key Sub-contract”	means each Sub-contract with a Key Sub-contractor.
“Key Sub-contractor”	means any Sub-contractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a

critical role in the provision of all or any part of the Services; and/or

(b) [Redacted]

“Know-How”

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement.

“KPI Failure”

means a failure to meet the Target Performance Level in respect of a Key Performance Indicator.

“Law”

means:

- (a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time to which a Party is subject;
- (b) the common law and the law of equity as applicable to the Parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard enforceable by law; or
- (e) any applicable direction, policy, rule or order that is binding on a Party and that is made or given by any competent regulatory body having jurisdiction over a Party or any of that Party’s assets, resources or business, in any jurisdiction that is applicable to this Agreement, and “Legal” shall be interpreted accordingly.

“Licensed Software”

means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software.

“Liquidated Damages”

means the amounts payable by the Supplier to the Customer in respect of a Project Delay as specified in the relevant Project Plan.

“Loss” or “Losses”	means all directly incurred losses, liabilities, damages, awards, orders, decisions and Claims and all related costs, expenses and payments made to third parties (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
“LSAP”	means the “Live Service Access Procedure” which is the procedure documented and agreed by the Parties. LSAP sets out the procedure allowing certain Customer staff to access the live environment in connection with certain management and monitoring activities.
“Major KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Maintenance Schedule”	means the rolling schedule of planned maintenance as defined in Clause 9.5 of the Terms and Conditions and, in default of agreement, it includes any reasonable times for maintenance that ought to have been agreed and not unreasonably delayed by the Customer from time to time.
“Malicious Software”	means: <ul style="list-style-type: none"> (a) any program code and programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect Software, data files, Equipment or operations; or (b) any other code typically designated to be a virus, worm, time or logic bomb, disabling code or routine, backdoor or similar.
“Management Information”	means the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority.
“Man-day”	[Redacted]
“Manual of Protective Security”	means the security manual of HM Government (as updated and amended from time to time), a copy of which has been provided to the Supplier in the supporting information accompanying the ITT and

thereafter as and when updated.

“Mapeley”

means Mapeley STEPS Contractor Limited, the Customer’s provider of fully serviced accommodation over a twenty (20) year contract period, starting on 2 April 2001.

“Material”

means any material in whatever form (including written, magnetic, electronic, graphic or digitised) including any methodologies, processes, know-how, reports, specifications, business rules or requirements, manuals, user guides, training materials and instructions, supporting material relating to Software and/or its design, development, modification, operation, support or maintenance, but excluding Software.

“Material Default”

means any Default by the Supplier which can be reasonably regarded as sufficiently material to warrant Termination of this Agreement.

“Measurement Period”

in relation to a Key Performance Indicator, means the period over which the Supplier’s performance is measured as is specified for each Key Performance Indicator in the relevant table set out in Schedule 2.2 (*Performance Levels*).

“Milestone”

means a phase or deliverable agreed as a “Milestone” in respect of a Project.

“Milestone Achievement Certificate”

means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, in the format agreed between the Parties for that Milestone.

“Milestone Date”

means the target date set out against the relevant Milestone in the Transition Plan or a Project Plan by which the Milestone must be Achieved.

“Milestone Payment”

means a payment identified in Schedule 7.1 (*Charges and Invoicing*) to be made following the issue of a Milestone Achievement Certificate.

“Milestone Retention”

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

“Minor KPI Failure”

shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph

2.2.1 of Schedule 2.2 (*Performance Levels*).

“Modify”

means to modify, add to, enhance, reduce, change, replace, vary, derive or improve, and “Modification” and “Modified” have corresponding meanings.

“Month”

means a calendar month and **“Monthly”** shall be interpreted accordingly.

“Monthly Service Report”

means a Monthly report demonstrating the actual performance achieved against each of the Service Levels in the preceding month.

“Monthly Server Compute Charge”

[Redacted]

“MSS”

means Management Support System.

“NAO”

means the National Audit Office.

“National Audit Office Representative”

means any representative or employee of the NAO or any third party appointed by the NAO to conduct an examination under Part B (Audit Rights) of Schedule 7.5 (Financial Reports and Audit Rights).

“NEP”

means The Newcastle Estate Partnership Limited.

“NEP Contract(s)”

means:

- (a) an agreement dated 9 January 1998 between the Secretary of State for Social Security and NEP by which NEP agreed to provide accommodation and related services at Longbenton, Newcastle and
- (b) an occupancy agreement between NEP and the Customer relating to the premises known as the Utilities Building.

“NEP Premises”

means the premises described in Schedule 2.6 (*Accommodation*).

“Net Book Value”

means the original cost of an asset (assuming a purchase on arm’s length terms) less depreciation or amortisation applied in accordance with GAAP.

“Neutral Adviser”

means a neutral adviser or mediator appointed to assist in the resolution of any disputes between the Parties.

“New Data Centre”	means a new data centre not in use as part of the Fujitsu Services as at the Effective Date.
“New Services”	means services and/or requirements which are different from, and in addition to, the services provided in the provision of the Services.
“Nominal Value Equipment”	means any Assets transferred under the 2004 Agreement to the Supplier by the previous Supplier pursuant to the Asset Transfer Agreements. for which nominal consideration is paid by the Supplier. Nominal Value Equipment does not include assets which are refreshed or transformed by the Supplier during the Term.
“Notifiable Default”	shall have the meaning given in Clause 28 (<i>Rectification Plan Process</i>).
“Normal Working Hours”	means the hours between 8.30 am to 5.00 pm London time, excluding weekends and national holidays.
“Object Code”	means software and/or data in machine-readable, compiled object code form.
“Off-shore”	means any place outside of the United Kingdom (England, Wales, Scotland, and Northern Ireland).
“Open Book Data”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
“Operating Environment”	means the Authority System and the Sites.
“Operational Change”	<p>means any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and <p>will not require a change to this Agreement.</p>

“Operational Services”	means the operational services described as such in the Services Description.
“Operating System Instance”	means an environment for running applications, including, but not limited to those provided by either a Windows or UNIX or Linux operating system, or a VM Host.
“P04 Rate Card”	means the rate card for the Rate Based Services (P04).
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement.
“Part A Service Levels”	means that Service Levels details in Schedule 2.2 (<i>Performance Levels</i>).
“Part A Service Level Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Part B Service Levels”	means that Service Levels details in Schedule 2.2 (<i>Performance Levels</i>).
“Pass-Through Expense”	means an expense, related to any items (including goods and services) procured by the Supplier on behalf of the Customer (or at the Customer’s request) under this Agreement, in connection with which the Parties agree that the Supplier shall act as payment agent for the Customer or the Parties agree that the Customer shall pay directly or an expense, related to this Agreement, which is otherwise agreed to be treated as a Pass-Through Expense in accordance with this Agreement.
“Payload”	means an environment for running applications within the S04 Standard Shared Service, provided by an Operating System Instance, that delivers a service. Environments required in support of this defined service, such as those on back-up and management servers, are not themselves Payloads.
“Pensions and Related Benefits”	means the pensions rights and benefits set out in Schedule 9.1 (<i>Staff Transfer</i>).
“Performance Failure”	means a KPI Failure.

“Performance Indicators”	means the Key Performance Indicators and any subsidiary Performance Indicators in Schedule 2.2 (Performance Levels).
“Performance Gain Share” or “PGS”	[Redacted]
“Performance Gain Share Statement”	has the meaning set out in Schedule 7.3 (<i>Value for Money</i>).
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Performance Review Meetings”	has the meaning set out in Schedule 2.2.
“Permitted Maintenance”	means the periods of time described in Clause 9.5 permitted for maintenance agreed with the other Party’s representative as part of a Maintenance Schedule and, in default of agreement, it includes any reasonable times for maintenance that ought to have been agreed and not unreasonably delayed by the Customer from time to time.
“Personal Data”	means personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement.
“Personal Data Breach”	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.
“PGS Average Service Line Target Margin” or “Average Service Line Target Margin”.	means the margin for each Service Line to be used in Schedule 7.3 (<i>Value for Money</i>) and is as recorded in the PGS sheet of the Summary Model that forms part of the Financial Model.
“PGS Excess”	has the meaning set out in Schedule 7.3 (<i>Value for Money</i>).
“PGS Relief”	has the meaning set out in Schedule 7.3 (<i>Value for Money</i>).
“PGS Shortfall”	has the meaning set out in Schedule 7.3 (<i>Value for Money</i>).
“Plan Delay”	means a delay to a plan for a Fujitsu Project Services project which the Parties have expressly

agreed shall be delivered by a target date.

“Policies and Procedures Manual”	means the standards and procedures manual relating to the Services Requirements that has been agreed between the Parties.
“Pricing File”	means the Fujitsu Services Pricing File.
“Prime Agreement”	means the 2004 agreement as amended and novated to apply as between the Parties to deliver the Expired Services.
“Prime Services” or “Expired Services”	means the applicable services delivered under the Prime Agreement.
“Problem”	means the unknown root cause, or potential cause of one or more Incidents.
“Process”	has the meaning given to it under the Relevant Data Protection Laws and “Processed” and “Processing” shall be construed accordingly.
“Processor”	has the meaning given in the Relevant Data Protection Laws.
“Programme”	means two or more related Projects required to deliver the same business change or to undertake related activities.
“Prohibited Act”	<p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) an offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

- (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

“Prohibited Transaction”

has the meaning given in Clause 10 (*Use of Off-shore Tax Structures*).

"Project"

means any programme of work which has been agreed by the Authority and the Supplier in accordance with the procedures set out in Schedule 6.3 (*Projects and Ordering*) (or equivalent). Such programme of work may involve the participation of an Other Supplier and require project management and project office activity.

“Project Based Charges”

has the meaning set out in Schedule 7.1.

"Project Plan"

means the agreed project plan for a Project set out in, attached to or included by reference in the relevant Project Work Order.

“Project Specific IPRs”

means Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Project and paid for by the Authority (and updates and amendments of these items) where the Parties have expressly agreed that IPR created shall belong to the Authority because it has paid for its creation or development but shall not include the Supplier Background IPRs or Supplier Protected IPR.

"Project Work Order"

has the meaning given in Schedule 6.3 (*Projects and Ordering*).

“Protected Supplier IPR”

means specific categories of Software or Materials that are agreed by the Parties as Protected Supplier IPR, being Software or Materials which the Supplier makes commercially available elsewhere or which the Supplier considers are otherwise sensitive or valuable, all as set out in

the list annexed to Schedule 5 (*Intellectual Property Rights*) as may be amended from time to time by agreement between the Parties in accordance with the provisions of Schedule 8.3 (*Change Control Procedure*).

“Protective Marking”

means the description applied to an asset to indicate its sensitivity or value (fully defined and explained in the Manual of Protective Security).

“Publishable Performance Information”

means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 to Schedule 8.2 (*Reports and Records*) which shall not constitute Commercially Sensitive Information.

“Quarter”

means a three calendar month period starting on the first of any of 1 January, 1 April, 1 July or 1 October.

“Rate Based Services”

means the services charged according to the Rate Card.

“Rate Card”

means the rate card set out in the Pricing Model attached to Schedule 7.1 (*Charges and Invoicing*).

“RCDTS”

means The Government Controlled Company RCDTS which is controlled by HMRC.

“Recipient”

has the meaning given in Clause 21 (*Confidentiality*).

“Records”

has the meaning given in Schedule 8.2 (*Reports and Records*).

“Rectification Plan”

means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default.

“Rectification Plan Failure”

means:

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 28.2 (*Submission of the draft Rectification Plan*) or 28.5 - 28.6 (*Agreement of the Rectification Plan*);
- (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to

Clause 28.6 (*Agreement of the Rectification Plan*);

- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) **thirty (30) Working Days of a notification made pursuant to Clause 28.1 (*Notification*); and**
 - (ii) **where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;**
- (d) where a Rectification Plan has been implemented a Performance Failure re-occurring in respect of the same Key Performance Indicator and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete).

"Rectification Plan Process"

means the process set out in Clauses 28.2 (*Submission of the Rectification Plan*) to 28.7 (*Agreement of the Rectification Plan*).

"Reimbursable Expenses"

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

"Release"

means in relation to any Deliverables (including Specially Written Software and Project Specific IPRs (which are in the nature of software)) the stage in the development process whereby those Deliverables are intended to be put in to live operation or production following successful completion of acceptance tests.

"Relevant Data Protection Laws"

means:

- (i) the Data Protection Act 2018;
- (ii) the UK GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;
- (iii) any other applicable Laws relating to the processing of personal data and privacy; and
- (iv) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws.

“Relevant Requirements”

means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority”

HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax.

“Relevant Transfer”

a transfer of employment to which the Employment Regulations applies.

“Relief Event”

means any Default, or any act or omission, by the Customer or a Services Recipient, or any of their respective employees or authorised persons acting on their behalf (including a Successor Supplier but excluding the Supplier, a Subcontractor, or any Supplier Personnel);

any incorrect, wrongful or negligent act or omission of a Services Recipient or any third party engaged by the Customer; or

the circumstances set out in Section 8.7 of Schedule 7 (*Change Control Procedure*).

“Relief Event Compensation”

means, pursuant to Clause 27 of the Terms and Conditions, the compensation payable by Customer to Supplier in relation to a Relief Event, which shall be an amount equal to:

the costs reasonably incurred by the Supplier in mitigating or rectifying the impact of such Relief Event;

	<p>any Revised Services Costs incurred by the Supplier in connection with the applicable Relief Event; and any Charges that the Supplier has been prevented from recovering due to the Relief Event,</p> <p>in each case, to the extent that the Supplier can demonstrate it has incurred such costs or has been prevented from recovering such Charges (as applicable) as a result of the Relief Event.</p>
"Relief Notice"	has the meaning given in Clause 27.2 of the Terms and Conditions.
"Replacement Supplier"	means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority).
"Repeat KPI Failure"	has the meaning given in Section 2.5.1 of Annex 2.1-1 of Schedule 2.2 (<i>Performance Levels</i>).
"Report"	means any document, format of data or information update (whether electronic or paper) to be provided to the Customer by the Supplier from time to time, on a regular or ad-hoc basis, for the purposes of reporting upon the provision of the Services, including the data files and reports listed in Schedule 8.2 (<i>Reports and Records</i>).
"Request For Information"	means a Request for Information under the FOIA or the EIRs.
"RfW Response"	has the meaning given in Schedule 6.3 (<i>Projects and Ordering</i>).
"Sanitised Personal Data"	means data derived from Authority Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.
"Schedule"	means each of Schedules of this Agreement.
"Security Accreditation"	means a formal process by which the DSU acknowledges that a specific Implementation will bring an acceptable level of security risk.
"Security Aspects Letter"	means the letter that the Customer issues to advise the Supplier of the required levels of Protective Marking in the provision of the Services.

“Security Check”	means the level of security vetting clearance that the Manual of Protective Security defines as Security Check.
“Security Discrepancy”	has the meaning given in Clause 21.1(r) (Protection of Personal Data) of the 2004 Agreement.
“Security Incident”	means any event relating to the provision of the Services and/or any Facilities used by the Supplier Personnel, which event damages or threatens to damage any tangible or intangible asset, including Equipment, Software, Material, Facilities, money, personnel, the confidentiality of information, or the integrity and/or availability of any IT systems (including the Technical Infrastructure) and/or Customer Data.
“Security Management Team”	means the security management team appointed by the Supplier in connection with this Agreement.
“Server”	means a physical device containing one or more Platforms including all of its integrated and attached devices including (e.g., but not limited to, monitors and keyboards, disk arrays).
“Service Charges” or “Charges”	means the Supplier’s charges for the provision of the Services, calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>).
“Service Continuity Plan”	means any plan prepared pursuant to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time.
“Service Continuity Services”	means the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>).
“Service Credit Cap”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Service Credits”	means credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Schedule 2.2 (<i>Performance Levels</i>).

“Service Hours”	has the meaning given in the applicable Service Level in Schedule 2.2 (<i>Performance Levels</i>).
“Service Levels”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
“Service Level Failure”	means that the Supplier’s performance has fallen below the Target Performance Level for the applicable Service Level.
“Service Recipient”	means those listed as such in Schedule 2.7 (<i>Service Recipients and Service Beneficiaries</i>) (as such Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services.
“Services”	means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>).
“Services Description”	means the services description set out in Schedule 2.1 (<i>Services Description</i>).
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).
“Sites”	<p>means any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or <p>(b) where:</p> <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with the Authority System takes place.
“Shared Services Amendment”	means a Change that amends or impacts the Shared Services.

“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.
“Social Value”	means the social, economic or environmental benefits set out in the Authority’s Requirements.
“Software”	means any computer program, program interfaces and any tools or object libraries embedded in that software, relevant to the provision or receipt of the Services.
“Software Supporting Materials”	has the meaning given in Clause 16 (<i>Specially Written Software and Project Specific IPRs</i>);
“Source Code”	means Software in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary for the use, reproduction and Modification of such Software.
“Specially Written Software”	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created after the Effective Date by the Supplier and paid for as part of Fujitsu Project Services (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
“Specific Change in Law”	means a Change in Law that <ul style="list-style-type: none">(i) relates specifically to the business of the Authority or to a Services Recipient; orii) specifically to the provision of outsourced technology services to the UK government and not to other UK customers of the Supplier; or(iii) specifically to the provision of the Services by the Supplier under this Agreement; or(iv) results in a need (or, in the case of the Customer, a desire) to change the Services in order to

comply with the provisions in this Agreement relating to Specific Change in Law.;

“Staff Transfer Date”

means, in relation to each In-Scope Employee, the date on which the services in which such In-Scope Employee is engaged transfer to the Supplier or such later date as the Parties may agree.

“Staffing Information”

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

“Standards”

means the standards, policies and/or procedures identified in Schedule 2.3 (*Standards*) and as updated from time to time by the Authority and notified to the Supplier.

"Standard Contractual Clauses"

means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the UK GDPR) which subsequently amends, replaces or supersedes these.

“STEPS Contract”

means an agreement dated 6 March 2001 (as may be amended from time to time) between the Customer, the Commissioners of Customs and Excise and the Secretary of State for the Environment, Transport and the Regions and Mapeley to transfer to Mapeley certain properties which were then vested in the public sector bodies and the provision of certain services in connection with the provision of accommodation to the public sector bodies.

“STEPS Premises”

means the premises described in Schedule 2.6 (*Accommodation*).

“Subcontract”

means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or

necessary for the management, direction or control of the Services or any part thereof.

“Subcontractor”

means any subcontractor or agent of the Supplier, including any other Supplier Group Company, that provides services in provision of any of the Services to, or on behalf of, the Supplier.

“Subcontractor Personnel”

means employees, officers, consultants, contractors and agents of any Subcontractor who are assigned to perform services in provision of the Services or any part of the Services, pursuant to this Agreement.

“Sub-processor”

has the meaning given at Clause 23.5.

“Subsidiary Undertaking”

has the meaning set out in section 1162 of the Companies Act 2006.

“Successor Body”

has the meaning given in Clause 37.4 (*Assignment and Novation*).

“Supplier Background IPRs”

means:

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software.

“Supplier COTS Background IPRs”

means any embodiments of Supplier Background IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not

typically negotiated by the Supplier save as to price; and

(b) has a non-trivial Customer Base.

“Supplier Equipment”

means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services.

“Supplier Contract Manager”

means such individual as the Supplier shall nominate, from time to time, to manage and control the relationship with the Customer.

“Supplier Employees”

means employees of the Supplier and/or any Supplier Subcontractor who are assigned to deliver the Supplier’s Solution or to fulfil the Services Requirements (or any part thereof) pursuant to this Agreement.

“Supplier Group”

means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings.

“Supplier Material”

means any Material created independently to this Agreement whether before or after its commencement, the Intellectual Property Rights in which are owned by the Supplier or any Supplier Group Company which is used to provide the Services, and shall include all Modifications to such Material.

“Supplier Personnel”

means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement.

“Supplier Profit Margin”

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

“Supplier Representative”

means the representative appointed by the Supplier pursuant to Clause 11.2 (*Representatives*).

"Supplier Review Meeting"

has the meaning given in Section 2.2(a) of Annex 11-1 of Schedule 11 (*Collaboration*).

“Supplier Solution”

means the Supplier's solution for the Services set out in Schedule 4.1 (*Supplier Solution*) including any

Annexes of that Schedule.

“Supplier System”

means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System).

“Supplier Software”

means any Software created independently to this Agreement whether before or after its commencement, the Intellectual Property Rights in which are owned by the Supplier or any Supplier Group Company, which is used to provide the Services, and shall include all Modifications to such Software.

“Supply Chain Transparency Information”

means the report to be provided by the Supplier to the Authority in accordance with Annex 1 of Schedule 8.2 (reports and Records).

“Supplier Third Party Material”

means Third Party Material which is licensed to the Supplier by third parties, and which the Supplier makes available to the Customer pursuant to this Agreement.

“Supplier Third Party Software”

means the Third Party Software which is licensed to the Supplier by third parties, and which the Supplier makes available to the Customer pursuant to this Agreement.

“System Work Product”

means:

- (a) Work Product consisting of an identifiable ‘product’ or system;
- (b) distinct frameworks or other corporate components developed under this Agreement where such frameworks or corporate components are major or identifiable system components of Work Product that manage shared corporate data across systems and implement common corporate business rules for accessing that data and which are implemented as major business process/system-level components; or
- (c) combinations of Material or significant

Software elements in the Work Product which are more than merely incidental and which, when taken together, comprise either Work Product described at (a) above or the distinct frameworks or other corporate components described at (b) above,

but in all cases excluding the individual low-level algorithms or Software sub-routines.

“Target Performance Level”

means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out in respect of the relevant Performance Indicator in Schedule 2.2 (*Performance Levels*).

“Tax”

means:

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

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

“Tax Non-Compliance”

means where an entity or person under consideration meets all three conditions contained in the relevant excerpt from the Customer’s “Test for Tax Non-Compliance”, as set out in Schedule 2.3 (Standards), where:

the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 8.4(c); and

any “Essential Subcontractor” means any Key Subcontractor.

“Tax Revenue”	means any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier.
“Technical Infrastructure”	means the combination of Supplier Equipment, Supplier Software and other items which the Supplier shall from time to time develop, implement and/or operate (as appropriate) in order to provide the Services.
“Telford Building Unavailability”	has the meaning given in Schedule 2.6 (<i>Accommodation</i>).
“Telford Buildings”	means the accommodation described as such in Schedule 2.6 Accommodation.
“Term”	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement.
“Termination”	means the termination of this Agreement due to expiry of the Term without renewal, or the expiry of the Term after extending this Agreement in accordance with Clause 4 of the Terms and Conditions, or any lawful termination of this Agreement.
“Termination Assistance”	means the termination assistance to be provided in accordance with Schedules 2.1 Services Description and Schedule 8.5 Exit Assistance.
“Termination Date”	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate.
“Terms and Conditions”	means the Clauses 1 to 49 inclusive of this Agreement.
“Termination Notice”	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination.

“Third Party COTS IPRs”	<p>means Third Party IPRs that:</p> <ul style="list-style-type: none">(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and(b) has a non-trivial Customer Base.
“Third Party COTS Software”	<p>means Third Party Software (including open source software) that:</p> <ul style="list-style-type: none">(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and(b) has a non-trivial Customer base.
“Third Party IPRs”	<p>means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software as specified as such in Schedule 5 (<i>IPR</i>) or as agreed in accordance with Clause 17.11.</p>
“Third Party Non-COTS IPRs”	<p>means Third Party IPRs that are not Third Party COTS IPRs.</p>
“Third Party Non-COTS Software”	<p>means Third Party Software that is not Third Party COTS Software.</p>
“Third Party Software”	<p>means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, as specified as such in Schedule 5 (<i>IPR</i>) or as agreed in accordance with Clause 17.11.</p>
“Transparency Information”	<p>has the meaning given in Clause 22.1 (<i>Transparency and Freedom of Information</i>).</p>
“Transparency Reports”	<p>has the meaning given in Schedule 8.2 (<i>Reports and Records</i>).</p>

“TWS”	means Tivoli Workload Schedule.
“UK”	means the United Kingdom.
“User Support Team” or “UST”	means a Supplier’s team responsible for local support of the infrastructure.
“UST Accommodation Requirement”	means the accommodation required for the UST team.
“Utilities Building”	means the premises known as “the Warehouse” or Tynemouth House at Benton Park View, Longbenton, Newcastle-upon-Tyne.
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994.
“VCSE”	means voluntary, community and social enterprises which are non-governmental organisations that are value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
“Waterfall”	means a linear and sequential approach to software design and systems development.
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.
“Work Product”	means any deliverable (in whatever form), including any Software or Materials, which may be created or developed by or on behalf of the Supplier and subsequent Modifications to the same in the course of and for the purpose of the provision of the Services, whether solely or jointly by the Supplier and the Subcontractors but excluding Third Party Software and Third Party Materials.



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (November 2020)

SCHEDULE 2.1 | Services Description

Schedule 2.1 | Services Description

This Schedule (Schedule 2.1 Services Description) sets out the Services which the Supplier has agreed with the Customer to provide being the Fujitsu Services and the Fujitsu Project Services.

Part 1: General - Fujitsu Services and Fujitsu Project Services

Priority of Documents

Unless otherwise expressly agreed and set out in the Agreement the terms set out in this Schedule shall apply to and define the Fujitsu Services and Fujitsu Project Services and where there is any conflict or ambiguity between the terms in this Schedule and the wider terms applicable to the Agreement then in respect of defining the Fujitsu Services and Fujitsu Project Services then the specific terms set out in this Schedule shall take precedence over all other terms relating to the Fujitsu Services and Fujitsu Project Services set out in the Agreement.

Definitions

“2020 Services Agreement”	means the agreement entered into between the Parties on 30 th September 2020.
“Additional Services”	means those services being delivered by the Supplier to the Customer under Annex 2-9 to the 2020 Services Agreement immediately prior to the Effective Date;
“Fujitsu Services”	means the services to be delivered by the Supplier to the Customer being services similar to those previously delivered by the Supplier to the Customer as the Additional Services under CCN009 to the 2020 Services Agreement and all as more particularly defined in Schedule 2.1 Services Description;
“Fujitsu Services Data Centre(s)”	means the datacentres used by the Supplier for the provision of the Fujitsu Services to the Customer during the Initial Term (and any Extension Period);
“Fujitsu Services Charges”	means the Charges payable by the Customer to the Supplier for the Fujitsu Services as set out in Schedule 7 Financial Matters;
“Committed Unrecovered Costs” or “CAUC”	means costs and expenses incurred by the Supplier to perform the Fujitsu Services for the Customer where recovery of the amounts involved is not provided by the Fujitsu Services Charges or reimbursed in some other way via Schedule 7 Financial Matters;
“Expired Services”	means those services being delivered by the Supplier to the Customer under the 2004 Agreement as at 30th June 2022;

“Flexible Collar” [Redacted]

“Low Volume Charge” or “LVC” [Redacted]

“Minimum Charge Threshold” or “MCT” [Redacted]

“2004 Agreement” means the 2004 Agreement - Version 27 as at 30th November 2020 with the addition of FS643 which amended Clause 12.

“Retained Fund” means the charge free provision, by the Supplier to the Customer, of ‘Man-days’ (as defined in Schedule 1 and in the 2020 Services Agreement for Additional Services) for use in activities including Service Stability work and Refresh Programme Management work as further described in Schedule 2.9 being the number of such Man-days arising as a consequence of the Fujitsu Services being calculated in accordance with Schedule 7.

“Total Volume-Based Charges” or “TVBC” [Redacted]

Background

- 1** The Customer’s SOTF programme (and other Customer projects) aims to replace the Additional Services that the Supplier provides by moving services from Fujitsu Services Data Centres with the majority migrating to cloud services and much of the remainder to hosting in Crown hosting data centres.
- 2** The Customer earlier entered into CCN009 to the 2020 Services Agreement for the Supplier to provide the Additional Services and now wishes to arrange to replace the Additional Services with the Fujitsu Services and Fujitsu Project Services from the Effective Date.
- 3** The Parties agree that this Schedule sets out the basis for the provision by the Supplier of the Fujitsu Services as replacement follow on services similar to those provided as the Additional Services.

- 4** In accordance with the Agreement, the Fujitsu Services will be in place so as to be available from the Effective Date until ended in accordance with the terms set out in the Agreement;
- 5** The alignment of the Fujitsu Services as a follow on to the Additional Services ensures delivery of the same known services, to the same service quality, under a similar charging structure, providing the same reporting, and all essentially at the same unit prices. This approach has been agreed by the Parties to minimise the impact on the Customer's business, simplify governance, and to allow both parties to focus only on what needs to change.
- 6** The Fujitsu Services to be provided by the Supplier are described where relevant by reference to equivalent services provided as the Additional Services under the terms set out in relation to the Additional Services under the 2020 Services Agreement save where the same are expressly updated and where, as a consequence, a specific amendment is required as set out in this Agreement.
- 7** The Parties have agreed the charging approach for the Fujitsu Services and Fujitsu Project Services as set out in the Fujitsu Services Charges in Schedule 7 Financial Matters, and these align with and reflect the charges payable for the Additional Services under the 2020 Services Agreement.
- 8** The Fujitsu Services Charges and the associated charging arrangements:
- 1** Provide for Fujitsu Services Charges aligned to existing known Additional Services Charges to continue for the Fujitsu Services by creating an equivalent charging regime for the Fujitsu Services that calculates the Fujitsu Services Charges;
- 2** Extends use of a Flexible Collar approach to create a level of Fujitsu Services Charges that reflects and protects the Supplier's agreed fixed costs in the event that the aggregate value of elements of the Fujitsu Services Charges falls below agreed levels, but otherwise leaves the monthly unit PxQ Charges to operate as they do for the Additional Services;
- 3** Puts in place a mechanism that allows the Flexible Collar to be reduced if elements of agreed fixed costs that it protects can be removed (so that the Supplier does not incur the same) for example where the Supplier is able to close one of the data centres used in connection with the Fujitsu Services;
- 4** Provides both Parties with protections in respect of any Committed and Unrecovered Costs when elements become no longer in scope of the Fujitsu Services Charges. These protections include providing visibility in advance of the Supplier needing to incur future Committed and Unrecovered Costs and ensuring there is agreement between the Parties as to how best to reduce or remove the necessity for these costs being incurred in circumstances where they will or could become Committed and Unrecovered Costs;

- 5** Deals with any novations needed as a result of exit appropriately and flexibly and at the appropriate time to:
- 5.1 Ensure that things that need to be novated to the Customer are novated so as to align to the Customer's exit from the relevant Fujitsu Services;
- 5.2 Stop the need for novation of things that the Customer will immediately migrate away from;
- 5.3 Avoid the complex tasks that would result from any novation of contracts that would consequently require an unpicking of component parts included in elements of the Fujitsu Services and or Fujitsu Services Charges while any elements continue to be in use and need to be charged for.
- 6** The Parties shall also agree any changes required to the Fujitsu Services and the Fujitsu Services Charges if novation occurs in order to neutralise any impact while the contract to be novated continues to be required in connection with use as part of the remaining Fujitsu Services being delivered by the Supplier. The objectives of both Parties should be to avoid complexity, mixed responsibilities, and the need for impacting resultant changes against the Fujitsu Services and Fujitsu Services Charges.
- 7** The principle agreed by the Parties is that they shall review and agree how third party contracts and arrangements linked to related Fujitsu Services will be dealt with and novated.
- 8** Once any related Fujitsu Services are being delivered without the ongoing use of a Third Party Contract that still subsists, then the Parties shall promptly agree whether the Third Party Contract can be and should be novated to the Customer at the Customer's request (on terms that avoid Committed and Unrecovered Costs being incurred by the Supplier) or be terminated by the Supplier in which case any stranded third party costs shall become the responsibility of the Customer.
- 9** The Parties will use their reasonable endeavors to agree as soon as reasonably possible (having regard to the Customers known plans for exit and any specific dates or trigger events that require a joint review) how to deal with third party contracts and arrangements. This is so that decisions on future novations and or terminations can be aligned to the Customer's expected and forecast need for the Fujitsu Services to reflect the projected future delivery of the Customer's SOTF programme.
- 10** The Parties agree that to protect the Supplier and in order to enable the Supplier to provide the required flexibility for the Fujitsu Services the following shall apply:

- 10.1 By reason of the operation of earlier arrangements for the updating of the Service Infrastructure there are and will be a number of aspects of the Fujitsu Services where essential and business critical investment by the Customer and refresh has not been made earlier as it was thought by the Authority that such investment was not appropriate due to the Authority's replacement plans.
- 10.2 However, in view of the term of the Agreement for the Fujitsu Services, the Parties now agree that there will be elements of business critical refresh needed to deliver the Fujitsu Services. The Parties have agreed the process for Service Infrastructure Updates which is set out in Schedule 2.9 including where relevant the consequences under this Agreement of not updating items on the Legacy List.
- 10.3 The Retained Fund (as explained in Schedule 2.9 and Schedule 7 may be used to undertake agreed refresh update activity.
- 10.4 In performing the Fujitsu Services the Supplier shall be entitled to, and does limit or exclude its liability for any issues caused to the Supplier's ability to deliver the Fujitsu Services as a result of a failure to refresh items on the Legacy List pursuant to Schedule 2.9.

Schedule 2.1 - Part Two Specific Services related terms applicable to the provision of the Fujitsu Services and Fujitsu Project Services

Parties

- 11** The Fujitsu Services are to be provided by the Supplier to the Customer.

Service Recipients:

Clause 44 (Service Recipients) and Schedule 2.7 (Service Recipients and Service Beneficiaries) shall apply to any Service Recipient of the Fujitsu Services and or Fujitsu Project Services .

Because as at the start of the Fujitsu Services the Customer is unclear as to the identity of all of the organisations that are to be Service Recipients it is acknowledged that the Customer has been unable to obtain from any Service Recipients an acknowledgement that the Customer shall be responsible for ensuring that all Service Recipients are bound by the terms of the Agreement and the Customer shall be liable to all acts and omissions of the Service Recipients as if such an the acknowledgement shall have been obtained.

- 12** The liability of the Customer to the Supplier for any claims brought by a Service Recipient shall not be limited in circumstances where the Customer has failed to comply with its obligations to be responsible for ensuring that all Service Recipients are bound by the terms of the Agreement and responsible for all acts and omissions of the Service Recipients.
- 13** The Supplier acknowledges that to the extent that the Fujitsu Services provided by the Supplier

benefit a third party it will accept this on the strict understanding that the Customer agrees to be responsible for the responsibilities of the third party receiving the benefit and the third party acknowledging that it has no rights against the Supplier.

Applicability of the scope and terms applicable to the Additional Services to the Fujitsu Services

Where the provision by the Supplier of the Additional Services to the Authority were or are prior to the Effective Date subject to the application of provisions set out in Annex 2.9 to the 2020 Agreement the same shall be applied mutatis mutandis to the Fujitsu Services unless otherwise expressly stated otherwise in this Agreement.

Schedule 2.1 - Part Three – Scope of the Fujitsu Services;

- 14** This part - Part Three of Schedule 2.1 - sets out, defines, and describes the Services comprising the Fujitsu Services which are to be provided and any service specific terms applicable in respect of such Fujitsu Services:

Scope of the Fujitsu Services

- 15** The following Fujitsu Service listing together with the Supplier Solution at Schedule 4.1 (Supplier Solution and Social Value) describes the Fujitsu Services that are in scope of Schedule 2.1 by reference to the similar Additional Services:
- 1** Fujitsu Services Data Centre Services:
 - 2** Electronic Folder Services:
 - 3** FAST Cloud Services:
 - 4** IT Continuity Services:
 - 5** Digital Application Services: and
 - 6** Associated Management Services.

- 7** For the avoidance of doubt, Service Line S14.3 is included in scope and the Supplier is continuing to provide this element of the Services.
- 8** These Fujitsu Services will by virtue of the Agreement be delivered as the Fujitsu Services from the Effective Date and the Additional Services will be replaced by the Fujitsu Services from that date.
- 9** The Fujitsu Services and or the Fujitsu Project Services are New Services (as defined) for the purposes of Schedule 8.3.

“New Services” means services and/or requirements which are different from, and in addition to, the services provided initially under the 2004 Agreement in the fulfilment of the Services Requirements.

Rate based, Project and pass-through Services

- 10** In so far as the Fujitsu Services also require or include rate based services and or pass- through associated with the Fujitsu Services these shall all be provided by the Supplier via this Agreement in accordance with this Schedule.
- 11**
- 12** Projects shall be provided as Fujitsu Project Services in accordance with this Schedule, Schedule 4.1 Supplier Solution and Schedule 6.3 as Fujitsu Project Services.

Nothing more nothing less

The Fujitsu Services to be performed are the services, functions, and responsibilities that the Supplier is and was performing as Additional Services under Annex 2-9 to the 2020 Services Agreement aligned to the Expired Services (and subject to paragraph 19 above) and which the Supplier now agrees to provide as the Fujitsu Services under this Schedule and this Agreement.

In order to facilitate this the Customer agrees that it will continue to perform its roles and responsibilities as performed in respect of the Expired Services and or the Additional Services and as now relevant to the Fujitsu Services.

The Fujitsu Services shall be materially the same as the relevant Additional Services.

The Fujitsu Services are intended to be comprehensive in terms of the categories of services and activities that the Supplier will perform as Fujitsu Services but are not all inclusive in that they do not list all the particular activities, resources, or other details necessary for the proper performance of such services.

Accordingly, the Fujitsu Services will consist of the services, functions, and obligations that the Supplier agrees to perform pursuant to this Schedule together with such other services, functions

and obligations which are not specified in this Schedule, but which:

- 1** are services, functions or obligations currently form part of the Additional Services and which formed part of the Expired Services, were performed within the twelve (12) Month period prior to 30th June 2022, and ancillary to any of services to be provided in respect of one or more of the categories of Fujitsu Services that the Supplier is to perform after the Effective Date;
- 2** were delivered as Expired Services save where such services, functions and obligations ceased to be performed prior to 30th June 2022 as a result of the exit from the Expired Services and or service lines as a result of the Customer electing to exit;
- 3** were delivered as Expired Services by the Supplier's employees or relevant subcontractors; or
- 4** are reasonably required for the performance by the Supplier of the services, functions and obligations expressly specified as Fujitsu Services in this Schedule;

but in each case only to the extent that the Supplier has as a result of this Schedule and or this Agreement a mechanism to recover via the Fujitsu Services Charges its costs and margin for performing such services, functions, or obligations; and unless such service, function or obligation is expressly set out in the Agreement or this Schedule as a function or obligation of the Customer or delivered as a service which has transferred to the Customer's other or replacement suppliers.

Due Diligence

- 5** The Customer acknowledges that, as immediately prior to the commencement of the Fujitsu Services the Supplier has provided the Additional Services to the Customer, the Parties have agreed that from commencement of the Fujitsu Services those Services now provided under this Agreement are suitable to meet the Customer's Requirements.

Reporting

- 6** The Parties shall comply with their reporting obligations in accordance with the Agreement with the addition of any equivalent Reports and Customer Reports for the Fujitsu Services to those provided for the Expired Services and or Additional Services.

Service Measurement

- 7** The Supplier shall provide the Fujitsu Services to the same service quality and Service Measurement as the Expired Services and or Additional Services.

Service Boundaries for exited services

No changes to service boundaries relating to the Fujitsu Services after the Effective Date are possible following an exit or partial on exit from the Additional Services except as agreed in writing between the Parties.

Fujitsu Services – General

For the avoidance of doubt Clause 7.3 Significant Advances in Technology in the 2004 Agreement shall not apply to the Fujitsu Services.

Exit Management

The parties acknowledged in respect of the Additional Services that the majority of the provisions relating to Exit applicable to the Expired Services contained in Schedule 09 to the 2004 Agreement (Schedule 09 (Exit Management) v27) were no longer appropriate and directly applicable to the Additional Services and that remains the case for the Fujitsu Services. Unless otherwise stated the Fujitsu Services shall be the only services relating to the Additional Services delivered by the Supplier to the Customer following the Effective Date and shall constitute all of the Termination Assistance required for the Additional services and or the Expired Services. The majority of the Fujitsu Services shall simply exit from this Agreement as a consequence of the migrations away from the Fujitsu Services as a consequence of the Customer's SOTF and other programmes.

Therefore, the following principles shall apply to exit from the Fujitsu Services:

The Supplier agrees to provide the Customer with exit assistance in respect of the Fujitsu Services on a similar basis to that set out in respect of the Additional Services as amended by agreement between the parties and set out below.

Subject to payment for Fujitsu Services Termination Assistance Services, where applicable, the Supplier shall provide the Customer with all information and data reasonably required by the Customer for:

- 7.1 the exit of the Fujitsu Services;

- 7.2 the replacement of the Fujitsu Services by the Customer; and
- 7.3 the transfer of Customer Data and HMRC Customer Data, subject always to compliance by the Customer with its obligations in this respect;

including but not limited to the relevant information and data set out in the updated Data Matrix (reference: Appendix 9-4 Data Matrix - Project X template 2 March 2022.xlsx) for Additional Services now attached here:

[Redacted]

- 8 The Supplier shall provide any assistance reasonably required by the Customer in respect of the termination of the Fujitsu Services including the transfer of Customer Data back to the Customer and any knowledge transfer and volumetrics and service management information reasonably required such assistance being chargeable in accordance with the Supplier's Rate Card.
- 9 The Parties agree that if the Customer requires any additional exit assistance such assistance shall be discretionary and also chargeable in accordance with the Supplier's Rate Card.
- 10 The Parties agree that such assistance shall not oblige the Supplier to provide outputs from its Fujitsu Services on exit where the same contain the Suppliers Intellectual Property or Confidential Information to which the Customer is not expressly entitled.

Schedule 2.1 – Part Four – Scope of the Fujitsu Project Services;

- 11 This part - Part Four of Schedule 2.1 – deals with the services comprising the Fujitsu Project Services which are to be provided at the Authority's request upon agreement by the Supplier.
- 12 Details of the Fujitsu Project Services available are set out in;

- 1 Schedule 4.1 Supplier Solution; and
- 2 how they may be requested and ordered is set out Schedule 6.3 Projects and Ordering.

Schedule 2.1 – Part Five – Suitability of the operating environment for delivery of the Fujitsu Services;

- 3** This part - Part Five of Schedule 2.1 - sets out the limitations and issues with the operating environment for the provision of the Fujitsu Services and the related actions and service specific terms applicable as a consequence for the Fujitsu Services:
- 4** The Authority acknowledges and agrees that it has been advised and accepts:
 - 1** the issues and risks associated with the provision of the Fujitsu Services utilising an aged Services Environment (detailed in the Legacy List) that the authority has chosen in some cases not to upgrade due to its intention to end the use of the Fujitsu Services and migrate;
 - 2** the aspects of the Services Environment that are not suitable for the provision of the Fujitsu Services;
 - 3** the actions needed to remedy and or address such unsuitable aspect; and in each case for the Initial Term and or any Extension Period.
- 4** The Authority accepts that, subject to the mitigations, timings and other arrangements set out in this part of Schedule 2.1, in Schedule 2.2 Performance Levels, in Schedule 2.9 Service Infrastructure Updates and or in Schedule 7 Financial Matters, these risks are for the Authority to own and manage.



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SCHEDULE 2.2 | Performance Levels

Schedule 2.2 | Performance Levels

1 INTRODUCTION

1.1 This Schedule describes in:

- (a) Annex 2.2-1, the Parties' obligations with respect to the measurement and calculation of the Service Levels and Service Credits;
- (b) Annex 2.2-2, the Parties' obligations with respect to monitoring performance against the Service Levels and Service Credits.

2 GENERAL PROVISIONS

[Redacted]



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SCHEDULE 2.3 | Standards

& Annex 2.3-1 TEST FOR TAX NON-COMPLIANCE

OFFICIAL – SENSITIVE - COMMERCIAL

Schedule 2.3 | Standards

1 INTRODUCTION

- 1.1 This Schedule lists the mandatory and binding legal regulations, policies and procedures that will apply to the provision of the Fujitsu Services during the Term. It is not intended that these Standards, where they are at variance with the Standards against which the Additional Services are provided, are intended to operate in a way that imposed fresh obligations on the Supplier. Rather they aim to record existing standards. Where there is a variance then either party may escalate any resultant issue and the Parties will aim to resolve this via the escalation process set out in Schedule 8.1 Governance and deal with the same via Schedule 8.3 Change Control Procedure.
- 1.2 This Schedule also sets out any industry standards and Customer or central government internal policies which must be adhered to by the Supplier.
- 1.3 The Supplier's obligation to comply with the standards and regulations set out below applies notwithstanding the Supplier's general obligations to comply with applicable Laws set out in the Terms and Conditions to the Agreement.

2 STANDARDS AND REGULATIONS

Without prejudice to the generality of obligations to comply with the law and changes in the law as set out in this Agreement, the Supplier shall, during the Term, comply (and shall ensure compliance by Subcontractors and Supplier Personnel) with the Laws, standards and regulations (as amended, repealed or re-enacted from time to time) as they apply to the provision of the Fujitsu Services.

2.1 Industry Standards

Where a standard is referred to in this Schedule, it shall include reference to supporting standards and/or documentation and to any standard which amends, extends, consolidates or replaces the same.

(a) System Standards

- (i) The Supplier has established the design of the Fujitsu Services previously for the Expired Services and the Additional Services and unless otherwise agreed between the Parties the Supplier shall retain such design throughout the Term.

- (ii) [Not used]

(b) IT Service Management Standards

The Supplier will deliver all relevant elements of service management in respect of the Services in a manner which is consistent with the principles set out in the Information Technology Infrastructure Library Standards (ITIL).

(c) Project Management Standards

The Supplier will manage any Projects for the Customer using a recognised project management methodology agreed with the Customer.

(d) Quality Management Standards

- (i) Subject as described below, the Supplier shall implement, in accordance with Good Industry Practice, relevant quality processes in the provision of the Fujitsu Services and or Fujitsu Project Services.
- (ii) The Supplier shall not knowingly do or knowingly cause to be done anything which may jeopardise or hinder the Customer's own quality standard accreditation.

(e) Security Standards

The Supplier shall implement security processes and standards which conform with the procedures set out in Schedule 2.4 (**Security Management**).

2.2 Customer and Central Government Internal Policies and Standards

The Supplier shall conform with the following internal policies of the Customer, or policies of UK Government to which the Customer adheres:

(a) Data Administration

- (i) The Supplier shall comply with implemented shared data definitions as directed by the Customer.
- (ii) The Customer Data is part of the Customer's departmental records and is subject to the terms of the Public Records Acts of 1958 and 1967 (as amended by the Freedom of Information Act 2000). The Supplier shall comply with the Customer's delegations under such Public Records Acts for archiving, retention and destruction of elements of the Customer Data in the provision of the Fujitsu Services.

(b) Project Management

The Supplier shall use recognised project management methodologies agreed with the Customer.

(c) Use of Overseas Services

Clause 21.2 of the Terms and Conditions sets out the Customer's policy regarding the use of the Customer Data, and the provision of the Fujitsu Services from outside the United Kingdom.

(d) The Customer Internet Site Privacy Policy

The Supplier shall comply with all aspects of the Customer's Internet Site Privacy Policy as set out in the Customer's Acceptable Use of Internet and IT Systems Policy, version 8.8 and dated 12th March 2019.

(e) The Customer E-mail Policy

The Supplier shall ensure that all Supplier Personnel comply with the Customer's policy on the use of e-mail as set out in the Customer's Acceptable Use of Internet and IT Systems Policy, version 8.8 and dated 12th March 2019.

(f) Access to Government Information

The Supplier shall comply with, and shall facilitate the Customer's compliance with, the Freedom of Information Act 2000, in accordance with its obligations set out in Clause 22.2 of the Terms and Conditions.

2.3 Amended or New Standards, Regulations or Policies

The standards, regulations and/or policies referred to in Sections 2.1 and 2.2 above may be amended, removed or replaced as agreed between the Parties through the Change Control Procedure. Neither Party will unreasonably withhold or delay its consent to such Changes.

2.4 Interoperability and Use of Technical Standards

Save as expressly set out in Schedule 2 (**Services**), and where reasonably possible, the Supplier shall ensure that any key elements of the Fujitsu Services that it introduces throughout the Term will be compatible, so as to be interoperable (with reasonable adjustments) with both the existing elements of the Fujitsu Services and other items and other Software set out in Schedule 4.4(Third Party Contracts) being software provided to the Customer by third parties which by inclusion in Schedule 4.4 the Supplier knows or should reasonably be expected to know are required to be compatible.

2.5 Special site requirements

- (a) Where the Customer has a presence at the premises owned or controlled by third parties, special requirements may apply to the Supplier, including its staff and agents, at those locations.
- (b) Subject at all times to compliance by the Supplier and its personnel with the relevant requirements in accordance with Section 2.5(c), the Customer shall promptly take all steps reasonably required by the Supplier to enable the Supplier and its personnel to access such premises and third party sites (including data centres) as reasonably required by the Supplier to perform the Fujitsu Services, unless agreed otherwise by the Parties.
- (c) The Supplier, while working at any such locations, shall operate in accordance with any such requirements of the site operator or other relevant party as notified to the Supplier.

For example, the British Airports Authority (BAA) normally insists that personnel who are required to go airside at its airports:

- (i) must previously have been cleared through additional security vetting procedures;
- (ii) must previously have passed a special airside driving test; and
- (iii) must be covered by adequate insurance – for example, as protection against claims for damage to aircraft through collision or other action.

3 ON-GOING DELIVERABLES

- 3.1 During the Term, the Customer may require evidence of the Supplier's compliance with all or any applicable standards and regulations and the Supplier shall provide such evidence upon receipt of

written request from the Customer. Such evidence shall be provided as described in the remainder of this Section 3.

- 3.2 Where certification is awarded by an authorising body to the Supplier or Subcontractor, the Supplier shall provide a copy of the current certificate to the Customer.
- 3.3 For those standards and regulations not covered by authorising body's certification, the Supplier shall provide an audit report or similar statement of conformance.
- 3.4 For the Customer's internal policies, the Supplier shall describe how these policies are being complied with and shall ensure that they are made available to the Customer on request.

4 QUALITY PRINCIPLES

- 4.1 The Supplier shall provide the Fujitsu Services in accordance with the following quality principles (as applicable from time to time) and shall maintain the same or similar quality principles throughout the Term. The Supplier shall notify any material change to these principles and notify the Customer if the Supplier intends to move away from these principles:
 - (a) Delivery of the Fujitsu Services is aligned to the Supplier's Europe Business Management System (EBMS) and as such is compliant with the requirements of ISO/IEC 20000-1 Service Management.
 - (b) Not used
- 4.2 Upon a reasonable request from the Customer for collaboration, the Supplier shall provide assistance to the Customer to help it understand relevant resultant processes and how they are implemented and assured so as to maintain and deliver Fujitsu Services of suitable quality.

Annex 2.3-1
THE CUSTOMER'S "TEST FOR TAX NON-COMPLIANCE"

1 CONDITION ONE (AN IN-SCOPE ENTITY OR PERSON)

1.1 There is a person or entity which is either: ("X")

- (a) The Economic Operator or Essential Subcontractor (EOS)
- (b) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with IFRS 10 Consolidated Financial Accounts¹;
- (c) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

2 CONDITION TWO (ARRANGEMENTS INVOLVING EVASION, ABUSE OR TAX AVOIDANCE)

2.1 X has been engaged in one or more of the following:

- (a) Fraudulent evasion²;
- (b) Conduct caught by the General Anti-Abuse Rule³;
- (c) Conduct caught by the Halifax Abuse principle⁴;
- (d) Entered into arrangements caught by a DOTAS or VADR scheme⁵;
- (e) Conduct caught by a recognised 'anti-avoidance rule'⁶ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- (f) Entered into an avoidance scheme identified by HMRC's published Spotlights list⁷; or
- (g) Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

3 CONDITION THREE (ARRANGEMENTS ARE ADMITTED, OR SUBJECT TO LITIGATION/PROSECUTION OR IDENTIFIED IN A PUBLISHED LIST (SPOTLIGHTS))

3.1 X's activity in Condition 2 is, where applicable, subject to dispute and/or litigation as follows:

- (a) In respect of (a), either X:
 - (i) Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁸; or,
 - (ii) Has been charged with an offence of fraudulent evasion.
- (b) In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.

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

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

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

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

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

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

⁵A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

⁶The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁷Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

⁸The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal



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SCHEDULE 2.4 | Security Management

Schedule 2.4 | Security Management

[REDACTED]



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SCHEDULE 2.5 | Insurance Requirements

Schedule 2.5 | Insurance Requirements

1 INSURANCE COVENANTS

- 1.1 Without prejudice to its obligations to the Customer under this Agreement, including its indemnity and liability obligations:
- (a) subject to Section 1.1(b) below, the Supplier shall maintain the insurances set out in Section 2 below at the minimum levels of cover set out in Section 2 below in full force and effect at all times during the Term from the Effective Date, and any other insurances as may be required by applicable Law;
 - (b) notwithstanding Section 1.1(a) above, in respect of professional indemnity, the Supplier shall maintain the insurances set out in Section 2 as “Professional indemnity” below at the minimum levels of cover set out in that part of Section 2 below in full force and effect at all times during the Term from the Effective Date and for six (6) years following the end of the Term;
 - (c) the Supplier shall not:
 - (i) cancel the insurances other than as set out in Section 1.1(d) below; or
 - (ii) make any material change to the insurances which results in the insurance terms or cover failing to comply with the obligations set out in this Schedule; and
 - (d) the Supplier may change insurers with whom the insurances are held, provided that at all time the insurance terms and cover are in accordance with the obligations set out in this Schedule.
- 1.2 The insurances shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- 1.3 The insurances shall be maintained with a reputable insurance company.
- 1.4 The Supplier shall not take any action or fail to take any action or permit anything to occur in relation to it which would entitle the relevant insurer to cancel, rescind or suspend any insurance, or to treat any insurance as avoided in whole or part. The Supplier shall notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance under any insurance in whole or in part.
- 1.5 On request from the Customer, the Supplier shall, not more than ten (10) Working Days after the Effective Date and within twenty (20) Working Days after changing insurers with whom the insurances are held, forward a letter from its insurance brokers who arranged the insurances confirming that the insurances the

Supplier has in effect fully meet the requirements of this Schedule containing at least the following information:

- 1** Class of insurance;
 - 2** Insurer;
 - 3** Period;
 - 4** Confirmation that the levels of insurance are at least as required in Section 2 below; and
 - 5** Confirmation that the insurance is in full force and effect.
- 5.1 The Customer may, no more than once every twelve (12) months, request in writing from the Supplier evidence of the existence of all insurances and the Supplier shall provide all such evidence within thirty (30) Working Days of such written request.
- 5.2 Where any insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 5.3 Where any insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the insurances whether under the terms of this Agreement or otherwise.
- 5.4 Nothing in this Agreement shall oblige the Supplier to take out or maintain insurance or insurance cover which is either:
- 1** unavailable in the insurance market with reputable insurers; or
 - 2** offered by insurers on terms such that the relevant insurance is not generally purchased by service providers similar in size and nature to the Supplier.

3 INSURANCES – REQUIRED CLASSES OF INSURANCE COVER

[REDACTED]



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SCHEDULE 2.6 | Accommodation

SCHEDULE 2.6 | Accommodation

1 PRINCIPLES AND STATEMENTS OF POLICY

- 1.1 The Customer acknowledges that the Customer Accommodation and FM Services will be required by the Supplier to provide the Services and for reasons of business continuity and the Customer shall comply with its obligations as set out in this Schedule.
- 1.2 The Customer wishes the Supplier to use the Customer Accommodation in the provision of the Services. However, the Customer reserves the right to depart from this policy (and use alternative Customer Accommodation and FM Services outside of the STEPS Contract and/or the NEP Contract(s)). The Customer (acting reasonably) will consult with the Supplier before exercising such right and any such Change shall be subject to the Change Control Procedure.
- 1.3 The Customer's accommodation policy has been determined to provide flexibility to the Supplier in deciding upon its requirements for accommodation and FM Services in order to support the provision of the Services. This flexibility is balanced by recognition of constraints imposed by certain parameters, in particular the need for business continuity and a certain degree of co-location or "close location" between the Customer's staff and Supplier Personnel and the potential costs consequences to the Customer where certain Customer Accommodation may not be required by the Supplier. This Section shall not prohibit the Supplier from engaging remote working practices when required.
- 1.4 The categories of accommodation used to provide the Services and their treatment (including FM Services) are described in this Schedule 2.6 (**Accommodation**). The Parties have agreed which premises are required in each of the categories listed (and the Planned Accommodation Exit Dates) to deliver the Services, this is documented in Annex 2.6-1. Changes to Annex 2.6-1 shall be made through Schedule 7 (**Change Control Procedure**). The following main categories of accommodation exist:
- (a) Customer Accommodation is listed in Annex 2.6-1a. The management and treatment of such accommodation is described in Sections 2 and 3 of this Schedule 2.6 (**Accommodation**).
 - (b) Supplier-sourced Accommodation is listed in Annex 2.6-1b of this Schedule 2.6 (**Accommodation**). The management and treatment of such accommodation is described in Sections 2 and 3 below.
- 1.5 The Supplier, unless otherwise agreed with the Customer, will be responsible for the provision of any premises to be occupied by the Supplier other than Customer Accommodation and the costs of such premises (including the costs of transferring services, assets, and/or people from Customer Accommodation to such premises) shall be incorporated within the Charges in accordance with Schedule 5 (**Charges**) and, if appropriate, reflected in the Pricing File. Any proposed changes to the list of

Supplier-sourced Accommodation set out in Annex 2.6-1b shall be governed by the provisions of the Agreement.

- 1.6 If the Customer exercises any of its rights set out in this Schedule 2.6 (**Accommodation**) such that it requires the Supplier to vacate any of the Customer Accommodation and Customer will not provide alternative Serviced Accommodation in accordance with paragraph 12 of Annex 2.6-3 (Heads of Terms), then:
- (a) the Customer shall provide notice in writing (a **“Customer Vacation Notice”**) to the Supplier specifying:
 - (i) the Customer Accommodation that the Supplier is required to vacate (the **“Impacted Customer Accommodation”**); and
 - (ii) the date on which the Supplier is required to vacate the Impacted Customer Accommodation;
 - (b) without limiting the Customer’s right to provide a Customer Vacation Notice in accordance with Section 1.6(a), the Customer will endeavour to provide as much advance notice as is reasonable having regard to the circumstances;
 - (c) the Customer shall pay the Supplier’s reasonable costs in relocating (not including the cost of reinstating any improvements which the Supplier has requested for its own business reasons unrelated to the provision of the Services to be carried out to the Serviced Accommodation being vacated);
 - (d) to the extent that the Supplier’s vacation of the Impacted Customer Accommodation in accordance with the Customer Vacation Notice causes a failure by the Supplier to provide the Services (**“Customer Accommodation Vacation Impact”**) then such Customer Accommodation Vacation Impact shall constitute a Relief Event under the Agreement; and
 - (e) the Parties shall document and agree:
 - (i) any required Changes to the Agreement required in order to reflect the vacation of the Impacted Customer Accommodation in accordance with the Change Control Procedure; and
 - (ii) any activities relating to the relocation from a data centre at a Customer Accommodation as a Project, subject to the terms of the Agreement .

2ACCOMMODATION TREATMENT

- 2.1 Annex 2.6-1 sets out the Supplier’s accommodation requirements as at the Effective Date (and thereafter, as amended), including in particular:
- (a) premises forming part of Customer Accommodation which the Supplier wishes to occupy (and, in each case, the duration of occupation required and the date

of proposed vacation of each property (“**Planned Accommodation Exit Date**”)) (Annex 2.6-1a); and

- (b) any Supplier-sourced Accommodation which the Supplier intends to use in the provision of the Services (Annex 2.6-1b) and which may be amended pursuant to the provisions of the Agreement.

2.2 Where Customer Accommodation is required, the responsibilities for the provision of that serviced Customer Accommodation and related FM Services will rest with the Customer. The Customer may provide such services to the Supplier through an FM Services Contractor. The Customer will be responsible for the provision of Customer Accommodation on a serviced basis and will bear the costs (including outgoings and business rates) which are not apportioned to the Supplier under this Schedule 2.6 (**Accommodation**) of such premises and the FM Services (except in circumstances detailed in this Schedule 2.6 (**Accommodation**)). Any apportionment of costs to the Supplier shall be ascertained by reference to Section 2.4.5 below.

2.3 In respect of Customer Accommodation:

- (a) the Customer will be responsible for ensuring that FM Services are provided, either by providing such FM Services itself or by working closely with an FM Services Contractor; and
- (b) the Customer shall provide furniture and other office equipment (for the avoidance of doubt, excluding IT equipment such as desktop IT equipment, printers and multifunction print devices, file and print servers, and the maintenance and support of such equipment) of the types set out in Annex 2.6-2 (“**Furniture and Office Equipment**”) for the Supplier’s use at Customer Accommodation in connection with the provision of the Services.

2.4 The Customer will be responsible for accommodation costs of Customer Accommodation occupied by the Supplier. The costs of Customer Accommodation (e.g., the facility price payable to Mapeley under the STEPS Contract or the costs of Furniture and Office Equipment provided by the Customer) used by the Supplier in the provision of the Services will be met by the Customer, and, with certain exceptions, will not be re-charged to the Supplier. The apportionment of such costs shall be ascertained by reference to Section 2.4(e) below. These exceptions are set out below:

- (a) To the extent that an element of Customer Accommodation or the FM Services or Furniture and Office Equipment is used by the Supplier for non-Customer business (e.g., to provide services to clients other than the Customer and/or Services Recipients), a due proportion of the costs borne by the Customer in respect of such Customer Accommodation or FM Services or Furniture and Office Equipment will be reimbursed to the Customer (either by re-charge to the Customer or by subtraction from the Service Charges), provided such costs are reasonable and market rate. In the unlikely event that an element of Customer Accommodation or the FM Services or Furniture and Office

Equipment is used by the Supplier for provision of services to the Customer under the Agreement and also for non-Customer business, the Customer and the Supplier shall (each acting reasonably) co-operate to agree a reasonable apportionment for the purpose of this provision.

- (b) The costs of:
- (i) changes to existing Customer Accommodation (including, for the avoidance of doubt, any resulting dilapidations costs) and/or Furniture and Office Equipment provided at Customer Accommodation (including both the costs of acquisition of new or alternative Furniture and Office Equipment and the costs of replacement of existing Furniture and Office Equipment); and
 - (ii) new or additional accommodation or accommodation services agreed to be met by the provision of new Customer Accommodation (i.e., not listed in Annex 2.6-1) and/or new FM Services and/or new Furniture and Office Equipment provided at Customer Accommodation,

will be met by the Customer (and will not be re-charged to the Supplier) to the extent that these are Customer business-related, driven by Changes to the Services, supported by an appropriate Business Case and/or (in the case of replacement Furniture and Office Equipment) required due to fair wear and tear, legislative changes or health & safety requirements. To the extent that such changes are not Customer business-related, are not driven by Changes to the Services, are not supported by a Business Case, and/or (in the case of replacement Furniture and Office Equipment) are required for reasons other than fair wear and tear, legislative changes or health & safety requirements, in respect of Customer Accommodation the Supplier shall reimburse to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges) the Customer's costs incurred in making such changes or in providing such Customer Accommodation and/or Furniture and Office Equipment. Apportionment of costs shall be ascertained by reference to Section 2.4(e) below.

- (c) Where the Supplier does not vacate any Customer Accommodation within a reasonable period following the Planned Accommodation Exit Date (to allow for the Supplier to remove its equipment, carry out any reinstatements or improvements and fulfilling any repair obligations with respect to such Customer Accommodation), Schedule 7 (**Change Control Procedure**) shall apply and, save in relation to Customer Accommodation in which the Supplier requires to remain in order to perform any of its obligations under the Prime Agreement, the Supplier shall reimburse to the Customer any additional or wasted costs incurred by the Customer (including costs payable to Mapeley, FM Services Provider or NEP) as a result of such delayed vacation by the Supplier.
- (d) Where applicable, additional costs incurred by the Customer in respect of

Customer Accommodation shall be reimbursed to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges):

- (i) as set out in Section 3.3(b) below; and
 - (ii) in the circumstances set out in Section 3.3(d) below.
- (e) Utilities charges at Customer Accommodation shall not be re-charged to the Supplier except on a fair and reasonable basis and either:
 - (i) as set out in Section 2.4(a) above; or
 - (ii) in the case of the third party charges (except for line rental which shall not be recharged) in respect of telephone and other telecommunications call charges by the Supplier and Supplier Personnel at Customer Accommodation.
- (f) In relation to re-location costs:
 - (i) the Supplier shall bear all costs associated with any re-location from Customer Accommodation into its own premises or other premises sourced or provided by itself unless a Business Case is made in accordance with section 2.4(b) above; and
 - (ii) where the Supplier moves between premises forming part of Customer Accommodation, costs arising in such circumstances will be met by the Customer (and will not be re-charged to the Supplier) where these are business-related, driven by a Change to the Services and/or supported by an appropriate Business Case. In all other cases, but subject to Section 2.4(f)(i) the Supplier shall reimburse to the Customer (either by re-charge to the Supplier or by subtraction from the Service Charges) the costs incurred in such re-location.
- (g) Any expenses, losses and costs borne by the Supplier under this Schedule 2.6 (**Accommodation**) in all cases other than as set out in Section 2.4(e)(ii) above or as otherwise expressed to be for the account of the Customer shall not be recoverable from the Customer and will not be incorporated within the Service Charges in accordance with Schedule 5 (**Charges**).

3 MANAGEMENT OF ACCOMMODATION

- 3.1 In all cases where the Supplier wishes to occupy accommodation outside the STEPS Contract, it will provide the Customer (sufficient information (in the form of a Business Case) to allow the Customer to assess and quantify the costs (if any) attributable to the Customer through not using the STEPS Contract.
- 3.2 Accommodation Change
 - (a) Where the Supplier's need for additional accommodation or FM Services changes during the Term (including a decreased need for space or services) or

the costs of providing such accommodation or FM Services change as a consequence of the Services, for each such situation, the Supplier will produce an appropriate Business Case in accordance with Section 2.4(b). For the avoidance of doubt only one Business Case is required for one request for additional or decreased Accommodation regardless of whether it relates to Customer Accommodation.

- (b) Where the Supplier wishes to vacate any Customer Accommodation on a date earlier than the Planned Accommodation Exit Date set out in Annex 2.6-1a and the Customer has no ongoing requirement for that accommodation, the Parties shall discuss that proposed Change through the Change Control Procedure under the Agreement and, in particular shall agree the impact of such Change on the Service Charges and/or the Customer's other costs, taking into account any attributable costs thereby incurred by the Customer (and not capable of mitigation) and the impact on the Service Charges.

3.3 Provisions Relating to Accommodation

- (a) In relation to Customer Accommodation, the Supplier shall comply with requirements for and restrictions on occupiers of such premises of the STEPS Contract, the NEP Contract and of third party landlords as reflected in the Heads of Terms, Annex 2.6-3. The FM Services to be provided by the Customer are governed by Section 4 below.
- (b) The Supplier shall use all Customer Accommodation in a reasonably efficient manner and, where occupation is shared with Customer or its subcontractors' personnel, in a manner which minimises interference with the Customer's or the subcontractors' operation. To the extent that the Supplier utilises Customer Accommodation and/or FM Services in a manner other than in the proper and efficient performance of services in provision of the Services that increases the Customer's costs (*e.g.*, the facility price under the STEPS Contract), such costs shall be borne by the Supplier. The Customer will involve the Supplier in its discussions with the third party levying such increases and shall provide a detailed explanation of the grounds for and level of such increase to the Supplier.
- (c) Unless otherwise agreed by the Customer in writing, the Supplier shall only use any Customer Accommodation as licensee, without any landlord and tenant relationship being thereby created and solely in the provision of the Services. The Supplier shall advise the Customer when it wishes any of its Subcontractors or their personnel to use such premises so that the Customer can give its prior written approval. Pending receipt of such approval, it shall not permit any Subcontractors or their personnel to use such premises.
- (d) The Supplier will be responsible for any damage to Customer Accommodation resulting from the abuse, misuse, neglect, negligence or treatment by the Supplier, Subcontractors or Supplier Personnel (other than fair wear and tear) or other failure to comply with the Supplier's obligations in respect of Customer Accommodation. In the event of such damage, the Supplier shall rectify such

damage or, if the Customer chooses to rectify the damage, shall indemnify and keep indemnified the Customer for the total cost of such rectification.

- (e) The Supplier will not make any improvements or alterations (including those involving structural, mechanical, or electrical alterations) to any of Customer Accommodation without the Customer's prior written approval that may be given subject to any approvals or conditions required by any third party landlord or reasonably required by the Customer, to be given or withheld as described in Section 3.4(a) below. The Supplier agrees that any building alterations, modifications or works carried out by or on behalf of the Supplier without such approval shall be at the Supplier's sole expense and the Supplier shall reimburse the Customer for its associated expenses, losses and costs arising in connection with such building alterations to Customer Accommodation.
- (f) The Supplier will co-ordinate the installation of Assets at Customer Accommodation with the Customer. The installation of Assets that substantially increase the power, cooling or weight requirements for any Customer Accommodation shall be subject to the Customer's prior written approval that may be given subject to any approvals or conditions required by any third party landlord or reasonably required by the Customer, to be given or withheld as described in Section 3.4(a) below.
- (g) The Supplier will be required to undertake the safe custody of, and due return to, the Customer of all Customer Accommodation made available to or otherwise occupied by the Supplier under the Agreement. This means that the Supplier should ensure reasonable use of Customer Accommodation that will not lead to adverse costs to the Customer respectively. Where consent is provided for works on Supplier-occupied Customer Accommodation in order to meet the Customer's business needs, these works will be carried out by Mapeley or another FM Services Contractor or as determined by the Customer and on terms reasonably required by the Customer. Reinstatement will only be required as a result of changes to Customer Accommodation instigated by the Supplier for its own business reasons and unrelated to the provision of the Services.
- (h) When any Customer Accommodation is no longer required for the performance of the Services, or upon Termination of the Agreement, the Supplier shall promptly vacate such Customer Accommodation, leaving such Accommodation in the condition required by this Schedule 2.6 (**Accommodation**), subject to reasonable wear and tear. The Supplier shall be responsible for all loss of, and damage to, such Customer Accommodation (other than to the extent such loss or damage is caused by the Customer or its FM Services Contractor or its subcontractors, and other than covered by insured risks and any policy of insurance that is not vitiated by the Supplier) and shall indemnify the Customer against such loss or damage to Customer Accommodation so caused, save as aforesaid.

3.4 Provisions relating to Customer approval and consent

- (a) If the Supplier wishes to carry out any works as described in Sections 3.3(e) and 3.3(f) above for the business purposes of the Customer, the Customer shall, at the Supplier's reasonable request, in respect of Customer Accommodation:
- (i) consent to such alterations, improvements or installations to the extent it is itself authorised to do so (such consent not to be unreasonably delayed); or
 - (ii) to the extent it does not have the requisite authority itself, use Commercially Reasonable Efforts to procure, at its own cost, any such necessary third party consents or approvals from the owner of the relevant property to enable such works to be carried out. The Supplier acknowledges that, if such third party consent or approval is not forthcoming either at all or within a reasonable period:
 - (A) the Customer shall not be responsible for withholding consent or approval to such works; and
 - (B) either Party may invoke the Change Control Procedure to agree a solution to deal with the absence or delay of consent.

4 FM SERVICES

- 4.1 The Customer shall provide (or procure the provision by its FM Services Contractor(s) of):
- (a) in relation to the STEPS Premises, the relevant FM Services set out in Schedule 2.6 Annex 2.6-5 (Part A) (subject to the exceptions set out in Annex 2.6-5 (Part B) where certain of the FM Services will not be provided to particular STEPS Premises). Except where otherwise specifically provided and to the extent that such FM Services are relevant to a particular Customer Accommodation, the Customer shall procure that the FM Services set out in Annex 2.6-5 shall be provided by Mapeley (or another FM Services Contractor) during Normal Working Hours. In exceptional circumstances, it may be necessary to reduce or cancel the availability of certain FM Services for all or part of a day. In such event, the Customer will provide the maximum possible notice of such interruption to the Supplier. The Customer shall use its reasonable endeavours to procure that such interruptions are kept to a minimum and any unavailability of the FM Services due to such interruption causing a failure by the Supplier to provide the Services shall constitute a Relief Event under the Agreement; and
 - (b) in relation to the NEP Premises, the Main Services to the extent they benefit the NEP Premises and the Additional Services, in accordance with and subject to the provisions of Annex 2.6-5 (Part A), subject to the exceptions set out in Annex 2.6-5 (Part B) where certain of the FM Services will not be provided to the NEP Premises. Except where otherwise specifically provided in this

Schedule, the FM Services shall be provided during Normal Working Hours. In exceptional circumstances, it may be necessary to reduce or cancel the availability of certain FM Services for all or part of a day. In such event, the Customer will provide maximum possible notice of such interruption to the Supplier but subject (where applicable) to first being given any relevant notification under the relevant NEP Contract. The Customer shall use its reasonable endeavours to keep such interruptions to a minimum. To the extent the Main Services are, from time to time, not supplied by the FM Services Contractor for any reason (other than due to the default of the Customer) then the Customer's obligation in this Section 4.1(b) shall be suspended to the same extent but the Customer shall use its reasonable endeavours to restore (or procure the restoration of) the Main Services in question. Any unavailability of the Main Services due to such interruption causing a failure by the Supplier to provide the Services shall constitute a Relief Event under the Agreement.

4.2 If the STEPS Premises cease to be subject to a right to occupy in favour of the Supplier, then the Customer shall forthwith be under no further obligation to procure the supply of any and all of the FM Services which are relevant to said Customer Accommodation, provided always that the Customer shall give to the Supplier as much notice as is reasonably possible of its intention to cease to procure the supply of some or all FM Services to the said Customer Accommodation.

4.3 Notwithstanding Section 4.1(b) above, if either:

- (a) the NEP Premises cease to be subject to a right to occupy in favour of the Supplier; or
- (b) the Customer ceases to be the Major Occupier of the Estate encompassing the NEP Premises,

then, in any such case, the Customer shall forthwith be under no further obligation to supply or procure the supply of any and all of the FM Services which are relevant to the NEP Premises, provided always that where provision of FM Services to the NEP Premises is to cease by virtue of Section 4.3(b), the Customer shall give to the Supplier as much notice as is reasonably possible of its intention to cease to supply or procure the supply of some or all FM Services to the NEP Premises and the Customer shall use all reasonable endeavours to transfer its obligations under this Schedule with regard to FM Services to the NEP Premises to the then Major Occupier of the Estate.

4.4 The Customer shall procure adherence, in relation to the STEPS Premises, by the FM Services Contractor to (and the Supplier shall accept) the following overarching requirements:

- (a) all FM Services are performed in accordance with that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking;

- (b) Customer Accommodation and FM Services provided comply with all applicable Law;
- (c) all licences, consents, permits and approvals required for the delivery, performance and provision of FM Services are obtained and maintained, and that the terms thereof are complied with;
- (d) the FM Services Contractor is provided with access to Customer Accommodation outside of Normal Working Hours as necessary, to meet the business needs of the FM Services Contractor; and
- (e) at all times, all Laws relating to health and safety are complied with.

4.5 The Customer shall ensure that all Customer Accommodation has all necessary health and safety processes and procedures in place to provide sufficient protection to personnel in response to any public health event.

5 CONTINUITY OF SERVICE PROVISION AT END OF CONTRACT

5.1 On the Termination of this Agreement:

- (a) the Customer will have an on-going requirement for technology service provision which will be highly dependent on the continued use of Customer Accommodation; and
- (b) the Supplier will vacate any Customer Accommodation, save in relation to Customer Accommodation in which the Supplier requires to remain in order to perform any of its obligations under the Prime Agreement.

6 RIGHT TO OCCUPY

6.1 The Customer shall be responsible for ensuring that the Supplier shall have the requisite right to occupy Customer Accommodation (or part thereof, as appropriate) for the purposes of providing the Services from the Effective Date until the relevant Planned Accommodation Exit Date. To the extent necessary, the Customer shall, at its own cost, obtain all related third party consents or approvals for this purpose.

6.2 The Supplier agrees that it shall not raise any requisition of title with respect to its occupation of Customer Accommodation (or part thereof).

7 GOVERNANCE

7.1 The Parties agree to apply the processes, controls and governance arrangements set out in Annex 2.6-4 for the provision of the FM Services on behalf of the Customer by the FM Services Contractor(s).

8 BUSINESS CONTINUITY

8.1 In the event of a significant incident, resulting in the Supplier being unable to occupy part, or all of any premises normally provided as part of Customer

Accommodation, the Customer will be responsible for the provision of appropriate alternative accommodation.

- 8.2 The Customer will appoint an “IT Estate” Accommodation Business Continuity Manager, who will develop, agree and implement appropriate processes, as part of the Supplier’s business continuity plans. The Supplier will appoint a Business Continuity Manager, who will work with the Customer’s “IT Estate” Accommodation Business Continuity Manager to develop, agree and implement appropriate processes, as part of the Supplier’s business continuity plans.
- 8.3 In respect of Customer Accommodation, the Customer shall be responsible for:
- (a) providing alternative Customer Accommodation (including, for the avoidance of doubt, alternative accommodation as well as alternative services providers) in the event of an incident occurring which prevents or is likely to prevent the Supplier occupying Customer Accommodation, as described within this Schedule 2.6 (**Accommodation**);
 - (b) ensuring that, wherever possible, such alternative accommodation will be:
 - (i) located within reasonable commuting distance of the affected site;
 - (ii) of sufficient capacity to enable the recovery of critical staff, with the recovery timescales to be agreed with the Supplier Business Continuity Manager;
 - (iii) of a type, quality and standard no less than currently occupied;
 - (iv) equipped with furniture and office equipment as outlined in Annex 2.6- 2 (Schedule of Furniture and Office Equipment); and
 - (v) equipped with facilities as outlined in Annex 2.6-6 (Business Continuity);
 - (c) all direct costs of relocation to the alternative Customer Accommodation; and
 - (d) co-ordinating the “IT Estate” Accommodation Business Continuity Manager’s activities with those of the Supplier related to the carrying out of accommodation-related business continuity and/or disaster recovery services as part of the provision of the Services.
- 8.4 The Customer’s “IT Estate” Accommodation Business Continuity Manager, in liaison with local “IT Estate” representatives shall, in relation to Customer Accommodation:
- (a) develop and maintain an overall service strategy for the continuity of the Customer “IT Estate” Accommodation including the requirement to facilitate short-term reciprocal arrangements within Customer Accommodation and, if appropriate, provide medium-term or long-term suitable alternative facilities);

- (b) develop an “IT Estate” facility specific continuity plan which will include contingency plans for maintaining critical and essential services and respond to the business needs of the Supplier;
 - (c) make provision for the continuous update of “IT Estate” facility specific asset management, site drawings and plans;
 - (d) provide assistance to the Supplier in implementing its business continuity plans in the event of an incident occurring; and
 - (e) participate, when required, in the Supplier’s Business Continuity Plan exercise programme.
- 8.5 In the event of the occurrence of a disaster or contingency of the type covered by the continuity plans, the “IT Estate” Accommodation Business Continuity Manager, or local “IT Estate” representative, shall execute the “IT Estate” facility specific business continuity plans in conjunction with and with the agreement of the Supplier’s Business Continuity Manager. Such actions will include, but not be limited to, the provision for the immediate securing of the site and assets and the re-instatement, if practicable, of the damaged facility.
- 8.6 If it is necessary to relocate to a suitable alternative local facility in the short, medium or long term, the “IT Estate” Accommodation Business Continuity Manager shall:
- (a) co-ordinate all “IT Estate” Accommodation activities with the appropriate Supplier Business Continuity Manager;
 - (b) provide full inclusive support and removal services; and
 - (c) maintain the security, integrity and assets of the evacuated facility.
- 8.7 It will be the responsibility of the Supplier’s Business Continuity Manager to provide details of the business continuity requirements (which shall include details of the Supplier’s reasonable business continuity requirements) to the “IT Estate” Accommodation Business Continuity Manager. The details will include, in the case of Supplier’s requirements:
- (a) an estimate of the likely numbers of Supplier staff to be relocated, from each building;
 - (b) the maximum recovery time for these staff. This will be given in short, medium and long-term requirements; and
 - (c) availability of expected access to IT services at the recovery site.

9 UNAVAILABILITY OF THE TELFORD BUILDINGS

- 9.1 The Parties acknowledge that the Supplier’s access to the Telford Buildings is required in order for the Supplier to perform the Services under this Agreement.

9.2 In the event of the Supplier's right of access to part or all of the Telford Buildings being detrimentally amended, blocked or terminated ("**Telford Building Unavailability**") then, to the extent that such unavailability of access causes or is likely to cause a failure by the Supplier to provide the Services then the following shall apply:

- (a) the Customer may ascertain whether any appropriate alternative accommodation is available and if so will use its Commercially Reasonable Efforts to provide the Supplier with such appropriate alternative accommodation. Such alternative accommodation shall not be considered appropriate unless:
 - (i) it is equivalent or better than that provided under STEPS/NEP;
 - (ii) it is within close proximity to the relevant Telford Buildings and in any event within three and a half (3.5) miles of the relevant Telford Buildings;
 - (iii) it provide contiguous space (co-location) to allow Supplier teams to effectively provide the Services;
 - (iv) the Customer is able to ensure that such replacement accommodation is provided in a timely manner including provision of building security and access, facilities and network connections (Live and Dev access) equivalent to those at the relevant Telford Buildings or (if not equivalent) sufficient for the purposes of enabling the Supplier to provide the Services; and
 - (v) it has in place all necessary health and safety processes and procedures to provide sufficient protection to personnel in response to any public health event;
- (b) if the Customer notifies the Supplier that it is unable to provide appropriate alternative accommodation, the Supplier shall as soon as reasonably practicable undertake an Impact Analysis as a Shared Services Amendment in accordance with Section 3.3 of Schedule 7 (**Change Control Procedure**) to consider the impact of the Telford Building Unavailability on the Supplier's performance of the Services; and
- (c) any period of Telford Building Unavailability shall constitute a Relief Event under the Agreement.

9.3 The Supplier shall notify the Customer as soon as reasonably practicable upon becoming aware of any Telford Building Unavailability.

ANNEX 2.6-1A**SCHEDULE OF CUSTOMER ACCOMMODATION REQUIRED**

[REDACTED]

- 1** Only part of certain premises shall constitute Customer Accommodation required, and the size of such part shall be agreed in advance between the Parties.
- 2** All of the above Customer Accommodation shall be provided from the Effective Date, except where otherwise indicated.

ANNEX 2.6-1B

ACCOMMODATION TO BE PROVIDED BY THE SUPPLIER

(SUPPLIER-SOURCED ACCOMMODATION)

[REDACTED]

- 1** Only part of certain premises shall constitute Supplier-sourced Accommodation, and the size of such part shall be agreed in advance between the Parties.
- 2** All of the above Supplier-sourced accommodation shall be used from the Effective Date.

ANNEX 2.6-2**SCHEDULE OF FURNITURE AND OFFICE EQUIPMENT**

The list set out below is a generic list of the types and categories of furniture and office equipment which the Customer will normally provide at Customer Accommodation. As noted in Section 2.3 of Schedule 2.6 (**Accommodation**), furniture and other office equipment excludes IT equipment such as desktop IT equipment, printers and multifunction print devices, file and print servers, and the maintenance and support of such equipment, which will not be provided by the Customer. The list set out below is not intended to be exhaustive and items not on the list may be added and/or provided by the Customer where there is a Customer-related business need. The Customer will provide the appropriate quantity of the following furniture and office equipment (and “appropriate” shall be determined by normal business requirements):

- 2.1 Desk and 2 pedestals on 1-to-1 basis, where appropriate
- 2.2 Tables (meeting, conference, kitchen, approach & use, etc.) as required for business use
- 2.3 Chairs (meeting, operators etc.) as required
- 2.4 Tall, Medium and Low Storage units (lockable) as required
- 2.5 2 / 4 Draw filing cabinets (lockable as required)
- 2.6 Lockable cupboards as required
- 2.7 Non-electric White boards / notice boards
- 2.8 Use of video conference equipment
- 2.9 OHP and OHP screens where in existence (these are to be phased down)
- 2.10 Appropriately equipped kitchen
- 2.11 Cold vending machines as appropriate (non-free)
- 2.12 Post room equipped as appropriate
- 2.13 Satellite photocopiers and associated consumables
- 2.14 Fax machines and associated consumables
- 2.15 Shelves as required
- 2.16 Lockers as required
- 2.17 Fire-proof safe as required by the business
- 2.18 Clocks
- 2.19 Telephone handsets and where required, loudspeaker and conference phones.
- 2.20 Coat racks
- 2.21 Plants, where existing
- 2.22 Window blinds, where necessary
- 2.23 Desk fans, where necessary
- 2.24 Post in/out trays
- 2.25 Waste bins
- 2.26 Confidential waste bins
- 2.27 Recycling bins
- 2.28 Key safes as appropriate
- 2.29 Microwaves

For the avoidance of doubt, the following non-exclusive list of items and tasks, will not be provided by the Customer:

- 2.30 Office stationery (*e.g.*, pens, pencils, pads, staplers etc.)
- 2.31 Shredders
- 2.32 Catering equipment for internal & external meetings
- 2.33 Any IT equipment or software in Customer Accommodation
- 2.34 Responsibility for the purchase, provision and on-going support/maintenance of PCs, Printers, Scanners, Servers etc. and associated software

ANNEX 2.6-3**HEADS OF TERMS**

- 1 In conjunction with the Supplier's provision of the Services under the terms of the Agreement, the Customer agrees to provide Customer Accommodation and related FM Services (in this Annex 2.6-3, "**Serviced Accommodation**") to the Supplier for the duration of this Agreement as necessary for the Supplier's provision of the Services under this Agreement.
- 2 The Parties agree that the Serviced Accommodation set out in this Schedule 2.6 (**Accommodation**) is that which the Supplier requires in order to provide the Services.
- 3 The Customer will provide Serviced Accommodation at no cost to the Supplier in order to facilitate and/or support the Supplier's provision of the Services under this Agreement.
- 4 Except where third party consent has already been secured, it is recognised that the Customer may need to obtain third party consent for the occupation by the Supplier of the Serviced Accommodation. The Customer will ensure that the Supplier has the requisite right to occupy the Serviced Accommodation, whether in whole or in part (as appropriate), from the Effective Date to the Planned Accommodation Exit Date.
- 5 Set out below are the principal heads of terms to be read in conjunction with the main body of Schedule 2.6 (**Accommodation**) of this Agreement, which will govern the basis of the Supplier's occupation of the Serviced Accommodation.

Parties - the contracting parties will be the Parties.

- 5.1 Term - the Supplier's occupancy will run from the Effective Date until the Planned Accommodation Exit Date, or a day three days prior to the expiry of the reversionary leasehold interest in the Serviced Accommodation or earlier termination of this Agreement.
- 5.2 Demise - the Supplier will be permitted to occupy part or whole of the internal space of Serviced Accommodation, such space to be agreed by the Parties from time to time. Any changes to the location of such internal space following the Effective Date shall be subject to the Change Control Procedure. In agreeing the extent of the Serviced Accommodation to be occupied by the Supplier, the Customer will, on a property-by- property basis, give due consideration to the Services individual to any given property and the requirements of the Supplier, for example requisite car parking spaces. In all cases, the Customer will use Commercially Reasonable Efforts to meet the Supplier's requirements notwithstanding the need for third party consents and the Supplier will have the benefit of the use of those common parts, common facilities, and those rights which the Customer is entitled to and capable of passing through to the Supplier.
- 5.3 Rent - Pursuant to Schedule 2.6 (**Accommodation**) of the Agreement, the Customer will bear the cost of providing Serviced Accommodation to the Supplier.

- 5.4 Outgoings - Schedule 2.6 (**Accommodation**) of the Agreement sets out the Customer's position on accommodation costs. It states, *inter alia*, that when the Customer incurs third party charges in respect of telephone and other telecommunication call charges made by the Supplier and Supplier Personnel at the Serviced Accommodation, the Supplier will be recharged for the direct pass-through costs of all telephone calls and telecommunication connections (except, for the avoidance of doubt, line rental).
- 5.5 Use - Serviced Accommodation is to be used solely for the purpose of providing the Services under the Agreement unless otherwise agreed with the Customer on terms to be agreed.
- 5.6 Security of Tenure - the Supplier's occupancy will not have the benefit of security of tenure afforded by the Landlord and Tenant Act 1954. Prior to the inclusion of any new Serviced Accommodation under this Agreement, the Parties (where applicable) will affect the required procedures for excluding the security of tenure provisions of the Landlord and Tenant Act 1954. The Customer will bear the administrative and legal costs.
- 5.7 Alienation - the Supplier will not be permitted to assign, underlet, charge or part with possession of whole or part of any of the Serviced Accommodation. Subject to obtaining any necessary third party consents, the Supplier will be permitted to share occupation with any of its Subcontractors and/or Supplier Personnel provided always that the Supplier does not create a landlord and tenant relationship which could potentially give rise to a protected tenancy.
- 5.8 Yield Up - at expiry or upon earlier determination of the Supplier's occupation, the Supplier must deliver all Serviced Accommodation back to the Customer with vacant possession having removed all the Supplier's chattels and those chattels belonging to its Subcontractors and the Supplier Personnel. To the extent that the Supplier utilises Serviced Accommodation in a manner that unreasonably increases the Customer's costs, such costs shall be borne by the Supplier.
- 5.9 Alterations - the Supplier will not be permitted to make any structural alterations and/or additions to Serviced Accommodation, however the Supplier will be entitled to make non-structural alterations and/or additions with the prior written consent of the Customer (not to be unreasonably withheld), and, if applicable, the superior landlord's consent. It is agreed that the Supplier will be permitted to install the Supplier's Assets subject to prior approval from the Customer and, where applicable, any superior landlord consent. For day to day maintenance work and repairs, the Supplier and its Subcontractors and Supplier Personnel will have access to a helpdesk operated on behalf of the Customer by a nominated agent. The scope of the helpdesk function in relation to FM Services and Change will be defined in Annex 2.6-4 (Governance). The Supplier will be liable for the cost of any works which it specifically requests and which the Customer decides, acting reasonably, are not necessary for the performance by the Supplier of its obligation under this Agreement to provide the Services.

- 5.10 Treatment of Premises - the Supplier shall be responsible for any damage to the Serviced Accommodation resulting from abuse, misuse, neglect, negligence by the Supplier, its Subcontractors and/or the Supplier Personnel, adverse treatment other than fair wear and tear, or other failure to comply with the Supplier's obligations in relation to Serviced Accommodation as set out in Schedule 2.6 of the Agreement. The Supplier agrees not knowingly or recklessly to do anything or omit to do anything which may cause the Customer to be in breach of its obligations to third parties. The Supplier shall indemnify and keep the Customer indemnified for the proper cost of rectifying any damage and/or to render reasonable assistance at the Customer's reasonable request to remedy such breach, to be determined in the circumstances by the Customer.
- 1** Relocation notice - the Customer may, at any time during the term of the Supplier's occupation, relocate the Supplier to alternative Serviced Accommodation, provided that:
- 1** the Customer:
- 1.1 serves reasonable prior written notice to relocate the Supplier;
- 1.2 uses reasonable endeavours to ensure that relocation does not interfere with the Supplier's ability to provide the Services;
- 1.3 provides alternative Serviced Accommodation of a similar size, standard, quality and location, and that such space is occupied on the same basis as provided for in Schedule 2.6 (**Accommodation**) of this Agreement; and
- 1.4 agrees to pay the Supplier's reasonable costs in relocating (not including the cost of reinstating any improvements which the Supplier has requested for its own business reasons unrelated to the provision of the Services to be carried out to the Serviced Accommodation being vacated); and
- 2** such relocation is subject to the Change Control Procedure (in particular and Impact Analysis on the Supplier's continued ability to provide the Services and any changes to the Charges).
- 2.1 For the avoidance of doubt, unless a Business Case is made, the Supplier is to bear the costs associated with relocation from Serviced Accommodation to its own premises or other premises sourced or provided by the Supplier.
- 2.2 The Customer in respect of Customer Accommodation bears the following obligations to:
- (a) keep the Serviced Accommodation in good and substantial repair and condition;

- (b) provide FM Services as specified in Annex 2.6-5 of this Agreement at Serviced Accommodation;
- (c) take reasonable steps to ensure performance by any superior landlord of the landlord's covenants in any superior lease;
- (d) ensure that the superior landlord adequately insures the Serviced Accommodation to cover full reinstatement in the event of damage/destruction;
- (e) comply with the tenant's covenants in any superior lease to the extent that they relate to the Serviced Accommodation occupied by the Supplier;
- (f) subject to agreement with the Supplier as to the Supplier's requirements, to furnish and equip the Serviced Accommodation (except that the Customer will not provide desktop IT equipment, printers or multifunction print devices, file and print services, and the maintenance and support of such equipment); and
- (g) permit the Supplier lawfully and peacefully to enjoy occupation of the Serviced Accommodation without any interruption, save that the Customer, its employees, agents, contractors and/or workmen will be permitted access in order to enable the Customer to carry out its obligation to provide those FM Services defined in Annex 2.6-5.

ANNEX 2.6-4

GOVERNANCE

Governance Processes for the provision of Accommodation and Facilities Management Services for Customer Accommodation

PRINCIPLES OF ACCOMMODATION GOVERNANCE

1 HIGH LEVEL PRINCIPLES

- 1.1 The Customer is committed to providing fully serviced accommodation to the Supplier in the Customer Accommodation as set out in Annex 2.6-1a of this Schedule 2.6 (**Accommodation**).
- 1.2 The Supplier has made an undertaking to use the Customer Accommodation to facilitate delivery of the Services to the Customer.
- 1.3 The Customer and the Supplier are all responsible for putting accommodation management teams in place to ensure that the Customer Accommodation detailed in Annex 2.6-1a , and FM Services detailed in Annex 2.6-5, are managed effectively in support of IT service delivery. This will include management of day-to-day service needs and additional requirements over time.
- 1.4 The overarching terms of occupation of the Supplier are set out in the main body of Schedule 2.6 (**Accommodation**) and in Annex 2.6-3 (**Heads of Terms**).

2 ROLES AND RESPONSIBILITIES

- 2.1 The Customer shall procure that the Customer Accommodation Team undertake the following roles and responsibilities in relation to Customer Accommodation:
 - (a) Single point of contact for the Supplier Accommodation Team for all aspects of accommodation and FM Services
 - (b) Management of FM Services Contractor(s) to ensure effective service delivery
 - (c) To act as escalation point for the Supplier Accommodation Team in the event of service delivery issues with the FM Service Contractor(s)
 - (d) To act as an approval / authorisation point for Supplier-initiated accommodation moves and service changes
 - (e) To manage the FM Services Contractor(s) to complete all aspects of work associated with Supplier-initiated accommodation moves and service changes
 - (f) To develop and maintain the overall long-term accommodation plan in conjunction with the Supplier
 - (g) Liaison with the Supplier Accommodation Team to understand future Supplier accommodation requirements and strategic planning
 - (h) Dissemination of site-related issues to the Supplier Accommodation Team

2.2 Supplier Accommodation Team

- (a) The Supplier will provide a single point of contact for the Customer Accommodation Team and FM Services
- (b) To act as the first point of contact for the Supplier's issues arising from the Customer Accommodation and FM Services, which cannot be resolved by the Customer's FM Service Contractor(s)' helpdesk, or are not resolved within a reasonable period of time or any other period of time as may be agreed by the Parties.
- (c) To act as the point of contact for changes requested by the Supplier to Customer Accommodation, and to ensure that requirements passed to the Customer for approval meet the criteria provided by the Customer, and meet the Supplier's strategic plans.
- (d) Managing Supplier's future accommodation requirement and strategic planning in conjunction with the Customer.

3 MEETINGS

3.1 The operational interface between the Customer and the Supplier will be through regular meetings. The Parties agree that:

- (a) a set agenda will be in place for all meetings as advised by the Customer;
- (b) the meetings will be chaired by the Customer;
- (c) minutes or Actions of the meetings will be provided by either the Customer Accommodation Team or the Supplier Accommodation Team at the direction of the Chair of the meeting; and
- (d) ad hoc meetings may be required to discuss specific projects and these may include representatives from the Customer's FM Services Contractor(s)' management teams.

3.2 Quarterly Accommodation Planning & Strategy Meeting:

- (a) **Purpose and Objectives:** To review the long-term Accommodation Plan and Strategy, and to agree changes requested by either the Customer or the Supplier, and which impact the Supplier's plans
- (b) **Scope:** All Customer Accommodation which is occupied by the Supplier and all Supplier requirements, plus any Customer requirements which impact the Supplier

- (c) **Reporting to:** Business Services Head of Corporate Services.
- (d) **Inputs:** Current long term Accommodation Plan and changes to the requirements or strategy
- (e) **Outputs:** Updated long term Accommodation Plan and strategy
- (f) **Representation:**

Representation	Member	Core/Periodic Attendance
Customer Accommodation Team		Core
Supplier Accommodation Team		Core
Other representatives as required		Periodic

- (f) **Meeting Frequency:** Quarterly, immediately after the Quarterly Planning Cycle.

3.3 Operational Review Meeting

- (a) **Purpose and Objectives:** To review all current major issues and risks relating to the provision of Customer Accommodation and FM Services and to agree resolution. To review progress on Customer Accommodation moves taking place during the next three months.
- (b) **Scope:** Issues and risks relating to the services provided by the BSAU. All major planned Accommodation moves
- (c) **Reporting to:** By exception, to Management Team and Business Services Management Board.
- (d) **Inputs:** Actions outstanding from previous meeting, Monthly AAU report, any issues not resolved at the Site Services Review meetings.
- (e) **Outputs:** Agreed actions. Updated Risk and Issue register.
- (f) **Representation:**

Representation	Member	Core/Periodic Attendance
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Customer Accommodation Team		Core
Supplier Accommodation Team		Core
Other representatives as required		Periodic

- (g) **Meeting Frequency:** Monthly, in first week of the calendar month.

3.4 Site Services Review Meeting

- (a) **Purpose and Objectives:** To resolve issues relating to the FM Services, and to review planned Business Cases
- (b) **Scope:** Issues which cannot be resolved between the relevant FM Service Contractor and the Supplier, and Business Cases which require further discussion before approval by the appropriate parties Reporting to: BSAU and AAU management teams, Operational Review Meeting
- (c) **Inputs:** List of issues requiring resolution, Business Cases requiring discussion, Actions from previous meeting.
- (d) **Outputs:** Agreed actions.
- (e) **Representation:**

Representation	Member	Core/Periodic Attendance
Customer Accommodation Team	Team member	Core
Supplier Accommodation Team	Team member	Core
FM Services Contractor	Manager	Periodic as required

- (e) **Frequency:** Weekly, by exception only.

4 FM SERVICE

- 4.1 The Supplier Accommodation Team will hold details of service delivery standards for each FM Service Contractor, for reference purposes.

- 4.2 Where any problems arise with day-to-day service provision, Supplier Personnel will have direct access to the FM Services Contractor(s)' helpdesk.
- 4.3 FM Services Contractors that are required to visit site to rectify a problem will use their best endeavours (as procured by the Customer) to notify the Supplier Accommodation Team in advance. In exceptional circumstances, the Supplier Accommodation Team or other on-site Supplier staff may refuse access if the works required would cause significant disruption. A report on any such action taken will be provided to the Customer.
- 4.4 Requests which are not fixed within the applicable service level will be escalated, by the originator of the request, to both the FM Services Contractor(s)' helpdesk, and to the Supplier Accommodation Team.
- 4.5 In the event of continuing problems or issues with service delivery from the FM Services Contractor(s), the Supplier Accommodation Team will escalate the matter to the Customer Accommodation Team.
- 4.6 The FM Service Contractor(s) conformance to Service standards will be reviewed at monthly Operational Review meetings.

5 ACCOMMODATION MOVE/SERVICE CHANGE

- 5.1 All requirements for changes to service delivery or for any works or office moves requested by the Supplier will be channeled through the Supplier Accommodation Team. This team will be responsible for drawing business requirements together and determining which will be submitted to the Customer. The Supplier Accommodation Team has a responsibility to ensure that only requests which meet agreed criteria are progressed to the Customer for the Customer's assessment and approval if appropriate.
- 5.2 The criteria will be agreed between the Customer and the Supplier and will be reviewed periodically.
- 5.3 All requests for accommodation moves or service change will be documented via a Business Case. Those Business Cases which require approval from the Customer will be submitted by the Supplier Accommodation Team to the Customer Accommodation Team. The Customer shall review and respond to each Business Case (stating its approval or rejection) within a reasonable period of time and, in any event, within ten
(10) Working Days. Acceptance of Business Cases shall not be unreasonably withheld.
- 5.4 The Customer will assess Business Cases on the grounds of business need, value for money and affordability against the perceived benefits of the change. If approval is given to instigate a change the authorisation will be confirmed to the Supplier Accommodation Team and the change commissioned from the appropriate FM Services Contractor as appropriate.

- 5.5 Under no circumstances will the Supplier Accommodation Team or Supplier's staff employ their own contractors to carry out work, unless authorised to do so by the Customer for any of Customer Accommodation.
- 5.6 Where the Supplier wishes to implement changes to accommodation that do not meet the criteria agreed with the Customer, then responsibility for any costs arising lies with the Supplier. However, as the Customer is responsible for the properties, the Supplier Accommodation Team must obtain authority to proceed from the Customer Accommodation Team in order for the Customer to manage the implementation and agree the process for reimbursement of costs. Authority to proceed will not be unreasonably withheld and any costs incurred by the Customer for which it seeks reimbursement must be reasonable and market rate.

EXHIBIT 2.6-1 - BUSINESS CASE FORM

[REDACTED]

ANNEX 2.6-5**FM SERVICES (STEPS AND NEP CONTRACT)****PART A (STEPS PREMISES)****1 PREMISES STANDARDS**

1.1 All premises and all services, furniture, plant, machinery and equipment are at all times:

- (a) structurally sound;
 - (b) watertight;
 - (c) fit for purpose;
 - (d) in good condition;
 - (e) of good appearance without serious discoloration or marking;
- operating in an efficient manner in accordance with design parameters to ensure the comfort and safety of the occupants; and
 - safe and secure.

2 EXTERNAL STRUCTURES**2.1 Building Finish and Structures**

All building structures and finishes (i.e. walls, brickwork, rendering, cladding) are of good appearance and protect against the elements.

2.2 Windows, Frames and External Glazing

All windows, frames and external glazing meet the following standards:

- (a) impervious to water penetration;
- (b) open easily to allow adequate ventilation, where required;
- (c) free of draughts when closed;
- (d) capable of being secured in accordance with security standards;
- (e) have window fittings and furniture that operate correctly; and
- (f) contain glazing that is intact and undamaged.

2.3 Roof, Guttering and Downpipes

The roof will, at all times, provide full protection and insulation from the ingress of wind, water and other elements. In addition, rainwater collection and dispersion goods will allow the efficient run-off of rainwater and snowmelt.

2.4 External Doors

All external doors are:

- (a) impervious to water penetration;
- (b) free of all draughts when closed;
- (c) open easily when unlocked/required;
- (d) capable of being secured in accordance with security standards;
- (e) have fittings and furniture that operate correctly; and
- (f) where appropriate, contain glazing that is intact and undamaged.

2.5 External Signage

All external signage is clear, legible and structurally sound.

2.6 External Building Fabric Maintenance

The roofs, walls, windows and doors will be maintained to meet visual, operational, ergonomic and health and safety standards.

2.7 Exterior Areas Maintenance

Hard surfaces to include road and car parking, hardstandings, paths, safety barriers, patios are maintained to meet visual, operational, ergonomic and health and safety standards.

3 INTERNAL STRUCTURES

3.1 Floors

All floors are safe and provide adequate support.

3.2 Partitions and Internal Walling Systems

All internal partitions and walling systems are safe and secure.

3.3 Doors

All doors, door furniture, fixtures and fittings operate effectively to design.

3.4 Ceilings

All ceilings are safe and secure and in accordance with the original design.

4 INTERNAL FINISHES

There are provided and installed all materials required to maintain the internal finishes of Customer Accommodation in a good state of repair and appearance.

4.1 Floor Coverings

All floor coverings are such that they are safe and generally free from physical defects having regard to their location within Customer Accommodation.

4.2 Blinds, Curtains, Other Fabrics, Wall Coverings and Decorated Surfaces

All blinds, curtains, other fabrics, wall coverings and decorated surfaces are such that they are of an appearance and condition appropriate to the location within Customer Accommodation.

4.3 Signage

All reasonably requested integrated and co-ordinated systems of internal signage, including directional signs, door numbering, name plates and door signs, are clear and legible and at all times reflect the operational requirements of the occupants and the building design and layout.

4.4 Interior Building Fabric Maintenance

All walls, doors, screens, ceilings, floor systems (to include carpets, other floor coverings, finishes, raised floors and screeds etc. to be maintained to meet visual, operational, ergonomic and health and safety standards.

Provision of a reactive repair service in addition to a planned maintenance programme to meet location requirements. In addition, any reported defects are responded to in a timely and efficient manner.

5 MECHANICAL AND ELECTRICAL SERVICES

All plant, equipment and equipment rooms, necessary for the delivery, performance and provision of the Services are in proper working order in accordance with their design.

5.1 Computer Environment

A suitable third party specialist is employed to carry out the inspections and all changes of plant and equipment are notified to the Supplier within one (1) month of occurrence.

Risks are appropriately managed to ensure that all operations are carried out with minimal risk to the Supplier's operations, these to include;

- (a) determining equipment that cannot be maintained without a shutdown;
- (b) scheduling and resourcing maintenance tasks to run concurrently; and
- (c) managing and controlling shutdowns.

5.2 Water Supply, Storage and Distribution Systems

All water supplies, storage and distribution systems will ensure the adequate, continuous and direct supply of water to all points in each Customer Accommodation where it is needed. In addition, the Customer will take reasonable steps to procure that, where appropriate, the water supply arrives in a condition suitable for direct consumption.

In addition, the Customer will take reasonable steps to procure that where there is a requirement for hot or cold water and hot or chilled potable water, systems that can supply, store and deliver this at required temperatures and in sufficient quantity at all points of supply to meet likely predicted demand and viable recovery periods are supplied and maintained.

5.3 Drainage and Waste Systems

Adequate drainage and waste systems including all sanitary ware, traps, sinks, vent installation, sewage, gullies and effluent disposal service and the connections to the appropriate soil waste and drainage systems are provided. The Customer will also take reasonable steps to procure that adequate surface water drainage to obviate the risks of flooding and ensure uninterrupted use of Customer Accommodation is provided. In addition, the Customer will respond to any blockage in a timely and effective manner.

5.4 Heating Systems

Suitable controls to facilitate the heating system's proper and efficient operation at each of Customer Accommodation are provided. The Customer will ensure that, where necessary, all pressure vessels and gas appliances are independently tested at appropriate intervals.

5.5 Ventilation Systems and Humidity Controls

At all Customer Accommodation where there is mechanical ventilation, air conditioning and/or cooling systems and humidity controls, or other specialist ventilation/extraction systems, these will remain balanced and operate efficiently and effectively, in accordance with their design and maintenance parameters. At all other

Customer Accommodation, the Customer will take reasonable steps to procure that natural ventilation will be maintained.

5.6 Electrical Power Distribution

Access to a permanent, constant and consistent electrical power supply, adequate for the Supplier's requirements, is provided.

Electrical power and all associated equipment and plant to support the operation of IT and telecom systems are provided including:

- (a) cabling distribution systems;
- (b) non-standard socket outlets and outlet apertures; and
- (c) temperature control.

5.7 Standby Electrical Supply

At all Customer Accommodation where there is a standby electrical supply, it is provided to ensure the operation of electrical equipment during a mains failure.

5.8 UPS

An uninterrupted power supply to ensure the operation of electrical equipment during a mains failure, dip, spike or surge is provided.

5.9 Interior Lighting

Adequate lighting systems at all Customer Accommodation capable of meeting the lux level and lighting category for the function of the area are provided, together with suitable controls to allow proper, efficient and economical use of lighting. The Customer will ensure appropriate replacement of lamps and ballasts in luminaries, where required.

5.10 External Lighting

External lighting that will allow safe entry to and egress from Customer Accommodation and safe movement within Customer Accommodation is provided. The Customer will ensure appropriate replacement of lamps and ballasts in luminaries where required.

5.11 Emergency Lighting

Emergency lighting that will enable users safely to exit all Customer Accommodation is provided.

5.12 Lifts, Hoists and/or Escalators

At Customer Accommodation, all lifts, hoists and/or escalators are provided and kept in operational order and in accordance with design parameters and the manufacturers' specifications.

5.13 Lightning Protection System

A system to ensure that Customer Accommodation, systems and users will be protected from any lightning strikes is provided.

5.14 Fire Detection, Suppression and Alarm Systems

All portable and fixed firefighting equipment, fire alarms, smoke alarms, sprinkler systems and suppression systems in liaison with the Local Customer Fire Officer and the Home Office Fire Inspectorate are provided.

5.15 Public Address System

Public address systems that are clearly audible above all background noise, at all locations within Customer Accommodation, are provided.

5.16 Induction Loops

Induction loops for the deaf and hard of hearing are provided.

5.17 TV and Radio Cabling, Aerials and Sockets

TV and radio cabling, aerials and sockets are provided.

5.18 Centralised Building Clock Systems

Centralised clock systems to show the correct time at all times are provided.

5.19 Electronically Operated Filing and Retrieval Systems

Electronically operated filing and retrieval systems to operate as designed will be provided.

6 MAINTENANCE OF STRUCTURE AND EQUIPMENT

6.1 Repair and Replacement of Defective and Non-Serviceable Parts

A service allowing for the repair and replacement of defective or non-serviceable parts to ensure that the structure and equipment is maintained in good operational order and is fit for the design purpose will be provided.

7 HEALTH AND SAFETY

7.1 Recovery Rooms

Recovery rooms, appropriate to the size of Customer Accommodation and the number of users, are provided.

7.2 Health and Safety Communication

- (a) The Customer will liaise with the Supplier on Health and Safety issues including the notification of incidences such as contact with infectious diseases or hazardous substances.
- (b) The Customer will facilitate public awareness as regards to staff compliance in accordance with UK Health and Safety legislation, and the undertaking of joint periodic formal and informal inspections.
- (c) Site instructors and trainers are adequately educated to allow them to perform all procedures relating to Health and Safety.

7.3 Fire Escape Routes and Disabled Refuges

Provide designated fire escape routes and disabled refuges, as appropriate to Customer Accommodation and in accordance with the fire certificate, to ensure that, in the event of an evacuation, all building users have safe and unrestricted egress from each Customer Accommodation or, in the case of disabled persons, protection from fire whilst awaiting rescue.

7.4 Bomb Blast Refuges

Bomb blast refuges as appropriate to Customer Accommodation are provided.

7.5 Health and Safety Signage

Appropriate Health and Safety signage is provided and displayed.

7.6 Fire and Evacuation Notices

Appropriate fire and evacuation notices and the local emergency instructions in force are provided, displayed and updated.

7.7 Evacuation Facilities for the Disabled

All evacuation facilities and equipment necessary for maintaining the Health and Safety of all disabled staff and those with restricted mobility for their safe and unrestricted egress from each Customer Accommodation in the event of an emergency are provided.

7.8 First Aid

All First Aid rooms will be regularly inspected.

7.9 Risk Assessments

Appropriate standard of risk assessments are completed and maintained in relation to the provision of the FM Services.

8 SECURITY

8.1 Security Systems and Intruder Detection Systems

- (a) Management of supply, installation, servicing and repair of security systems in conjunction with appointed suppliers, and all items of security will be fully operational and working correctly.
- (b) The intruder detection systems that are provided are designed to comply with the relevant codes of practice and or laid down requirements of The National Approval Council for Security Systems ("NACOSS") and relevant British Standards to achieve the required level of security appropriate to the assessed risk at each Customer Accommodation.

8.2 Panic Alarms Systems

Panic alarms activated by remote signals are provided.

8.3 Access Control

- (a) Access control systems are provided which are designed to comply with the relevant codes of practice and/or requirements laid down by NACOSS (NACP 30) and relevant British Standards, to achieve the required level of security appropriate to the assessed risk and internal requirements at each Customer Accommodation.
- (b) Maintenance of the access control system and barrier gates to include the adding and deletion of passes and provision of audit data to comply with the Data Protection Legislation.

8.4 Closed Circuit Television Systems

- (a) That for specified sites, ensure operation and maintenance of CCTV equipment (cameras, control, recording equipment and related hardware).
- (b) All CCTV systems provided are designed to comply with the relevant codes of practice and/or laid-down requirements of NACOSS (NACP 20) and relevant British Standards to achieve the required level of security appropriate to the assessed risk at each Customer Accommodation. This includes all monitoring and recording and playback equipment necessary for the correct operation of the system, together with secure storage provision for tapes.

8.5 Security – Physical Guarding

Where appropriate, the following services (whether in-full or part) will be provided:

- (a) all security posts are kept secure and manned with the appropriate number of security staff;
- (b) 24 x 7 guarding cover at the designated sites – Telford Buildings, Worthing (Barrington Road and then Teville Gate House), and other sites upon agreement by the Parties;
- (c) patrols (internal, external / mobile) of the site and buildings, dealing with any incidents, potential threats to security;
- (d) additional ad hoc manned guarding to facilitate project work around the site;
- (e) manufacturing, issuing and checking of ID /site passes (including visitors);
- (f) control and issuing of building keys by authorised personnel, and the locking and unlocking of buildings at agreed times;
- (g) investigation of minor incidents upon request and, where appropriate, the escalation of such reported incidents;
- (h) assurance that checks are in place allowing only authorised persons and deliveries access to the sites, preventing unauthorised persons entering restricted areas;
- (i) control and checking of vehicle passes, and the regulation of vehicular access, parking and egress from the sites;

- (j) outside of Normal Working Hours, any switchboard telephones calls are answered and dealt with where possible;
- (k) responsibility for lost and found property on site is provided;
- (l) “tannoy” announcements in appropriate buildings for routine / emergency situations;
- (m) issuing personal attack alarms to staff upon request and, if manning levels allow, accompanying, when requested, staff to their cars during working hours;
- (n) monitoring of various systems and, where required, taking action to investigate and respond;
- (o) issuing of fleet vehicle / hire car keys and documentation;
- (p) any ad hoc requests not covered above will be considered and responded to, where appropriate.
- (q) In addition, during silent hours, the security officers will:
 - (i) check that safes are secure;
 - (ii) check that specified lockable presses are secure;
 - (iii) check that there are no electrical/water hazards;
 - (iv) check that fire appliances are operational;
 - (v) check that fire exits are clear;
 - (vi) check that fire exits are operational;
 - (vii) check that surveillance of computer hall is operational;
 - (viii) check that surveillance of print room is operational;
 - (ix) receive mail deliveries; and
 - (x) where already in operation, ensure that security tapes are left in foyer for despatch to off-site store.

8.6 Security Management

Efficient security management services will be provided to include:

- (a) operational management of contracted security officers including desk training of in-house officers;
- (b) advice and guidance to staff and visitors on security procedures and policy operating within specified sites are provided;
- (c) the logging of all reported security incidences, where data is provided to the Customer's Departmental IT Security Officer;
- (d) maintenance and storing of appropriate records, together with performance monitoring, invoicing and approving of Assignment Instructions; and
- (e) purchases and all necessary consumables for security systems and locations are held by authorised personnel.

8.7 Ad Hoc Security Measures

Security measures such as roller spikes, barbed wire, anti-climb paint and grilles/shutters to meet the reasonable security requirements at each Customer Accommodation are provided.

9 CLEANING

9.1 Bin Stores and Storage

Bin stores to house bulk waste securely are provided.

9.2 Industrial Waste Disposal Equipment

Industrial waste disposal equipment, e.g. shredding machines, compactors and disintegrators, appropriate to the material to be processed and the needs of Customer Accommodation are provided.

9.3 Confidential Waste

Provision and maintenance of a contract for regular confidential waste disposal for collection and to ensure secure destruction:

9.4 Hygiene Services

Provision and maintenance of appropriate levels of sanitary consumables and hygiene services including roller towels, sanitary supplies/dispensers. All domestic and sanitary consumables are replenished regularly.

9.5 Window Cleaning

Provision of a periodic cleaning for windows (internal and external) to meet location requirements.

9.6 External cleaning

Cleaning of external areas including entrances, services areas, car parks, paths, windows, lighting, signage, fixtures & fittings, snow and ice clearance to meet location requirements.

9.7 General Cleaning

The following general cleaning services will be provided:

- (a) a daily cleaning and disposal service appropriate for each area consistent with its function and usage;
- (b) a waste management service for office, catering, non-confidential waste which complies with statutory procedures and documentation;
- (c) periodic cleaning for special cleans (to include carpets, blinds, etc.) to meet location requirements; and
- (d) the assurance that response to any helpdesk requests relating to cleaning will be dealt with in an efficient and timely manner.

10 LANDSCAPING/GARDENING – INTERNAL & EXTERNAL

10.1 Where already in existence, facilities to include, but not limited to:

- (a) gardening, maintenance and upkeep of grounds and greenery within particular locations; and
- (b) maintenance of internal plants,

are provided by fully trained personnel, certificated where required.

11 PEST CONTROL

All buildings are free from pests, including but not limited to, fleas, rats, vermin, and ants. The Customer will ensure immediate response to any calls relating to this matter.

12 CATERING

12.1 Dining Rooms and Messing Areas

Dining rooms and messing areas discrete from operational areas to avoid any interruption to business activity are provided.

12.2 Service Counter Areas

Service counter areas and equipment taking full account of the safe and efficient throughput of customers during peak periods are provided.

12.3 Catering Service Kitchens and Storage Rooms

12.4 Catering service kitchens and storage rooms adjacent to dining areas, discrete from operational areas and to allow the efficient delivery of food, goods and disposal of waste, are provided.

12.5 Light and Fixed Catering Equipment

All fixed catering equipment sufficient to maintain the levels of service required is provided.

12.6 Bars, Bar Lounges and Games Rooms

Where already in existence, bars, bar lounges and games rooms, including bar cellars and storage rooms, discrete from operational areas to avoid any interruption to business activity, are provided.

12.7 Tea Points/Staff Kitchens

- (a) Equipment and facilities within tea points and staff kitchens for staff to make hot and cold beverages and hygienically to store, wash and dry crockery and utensils and refrigerate milk and other consumables are provided.
- (b) Facilities and equipment for staff to cook and reheat food are provided.

12.8 Catering Service

A managed catering service at agreed locations is provided to include stock control, replenishing of food/drink and co-ordinate provision of hospitality catering.

12.9 Trolley Service/Vending Machines

Where already in existence, a trolley service and pay purchase vending machines for cold food/drink is provided.

13 CONFERENCE SERVICES

Provision of video and audio conference facilities in specified locations to include, but not be limited to, video conferencing reservations for main rooms and co-ordination of fault chasing, set up and overseeing special projection equipment, arranging site conference rooms, equipment and refreshments (the latter will carry a charge) where requested and changing room layout where required.

14 FURNITURE MANAGEMENT AND CO-ORDINATION

Provision of a centrally co-ordinated furniture management service that maximises the use of existing assets through storage, distribution and disposal. The service will include support and advice on furniture requirements within specified locations; compilation of necessary paperwork to allow for purchase of required furniture and co-ordination of access for delivery and installation will be provided.

15 MAIL ROOM / POSTAL SERVICES/MESSENGERS

15.1 An operational post room for the regular distribution, sorting, collection, despatch of internal and external mail, parcels and packages is provided. The services will also include the following:

- (a) daily collection of outgoing mail and parcels by postal and parcel company;
- (b) issuing of tape boxes to other supplier sites as frequently as required;
- (c) despatch of outgoing material not documented in Customer/Supplier output handling instructions shall be negotiated with the Postroom Manager; and
- (d) a main focal point for mailroom staff, service users, distribution couriers and customs and export.

15.2 The services are open Monday to Friday, except public holidays applicable to the particular region, from:

- (a) 24x7 – Telford Buildings
- (b) 07.00 to 17.00 (Monday to Thursday) and 08.00 to 16.30 (Friday) – Worthing (Barrington Road and then Teville Gate House)

15.3 Goods In

Provision of sufficient staffing for goods in areas at specified locations, such duties to include receipt of goods, couriers, despatches.

15.4 Porterage

- (a) Provision of a porterage service to include, but not restricted to:
 - (i) regular mail collection and distribution to each building;
 - (ii) regular stationery delivery to each building;
 - (iii) confidential waste collection, delivery to specific points and where required, shredding at various sites;
 - (iv) collection and removal of bulk waste from Supplier areas;
 - (v) distribution of manuals, updates, circulars and such like articles as and when required; and
 - (vi) tasking, upon request of staff, to include movement of small furniture, heavy files, assembling and dismantling furniture where possible, internal/external documentation delivery when required, movement of stationery and supplies, movement of archives to and from stores, fax collection and distribution, and providing general assistance as required.

16 OFFICE KEEPERS

16.1 Where already in existence, the following services will be provided:

- (a) arranging for disposal of redundant furniture;
- (b) providing and supervising porterage including waste removal for shredding/baling;
- (c) providing messenger services;
- (d) supervising incineration of tapes and disks;
- (e) assisting in site accommodation moves; and
- (f) liaison point for Porter, Paper Keeper and Messenger Services.

16.2 Times of Operation

This service will be provided during the hours specified below:

08:00 – 17:00 Monday to Friday excluding Bank Holidays applicable to each location.

16.3 Third Party Recharging

Unless otherwise specified, any third party costs of consumables will be recharged to the Supplier in full.

17 BULK STORES

17.1 Where already in operation, provision of bulks stores will include the following services:

- (a) placing orders with suppliers, stock control and despatch of internal requisition;
- (b) forklift trucks to carry out furniture and stationery stock-holding duties in bulk stores; and
- (c) furniture and maintenance repair.

This service will be provided during normal working hours applicable to each location.

17.2 Document Storage

A service to allow for document storage is provided.

18 PORTABLE APPLIANCE TESTING (PAT) OF NON-IT EQUIPMENT

Portable appliances are checked, tested and certified to comply with statutory requirements. The Customer will ensure that PAT records are appropriately managed and maintained, and any calls relating to this matter will be dealt with efficiently.

19 VOICE TELEPHONE SERVICES

19.1 The following services will be provided in relation to voice telephone:

- (a) equipment and services for internal and external telephone calls;
- (b) repairs and maintenance of telephone equipment as and when required; and
- (c) where already in existence, pay phones will be available.

Any Supplier costs associated with the provision of this service will be recharged to the Supplier accordingly.

- 19.2 All faults in the telephone equipment have to be notified by the Supplier to the Customer, which will report the fault to the appropriate contracted maintainer for action.

20 RECEPTION SERVICE

Where applicable, a fully manned reception service to include switchboard service during the hours agreed for each particular site will be provided. In addition, the service will include special deliveries pending collection, taxi reservation and co-ordination, badge issue to visitors in accordance with security procedures.

21 OPERATIONS HELP DESK

- 21.1 The provision of an operations help desk:

- (a) for all enquiries relating to specified services, where all helpdesk requests will be responded to in an efficient and timely manner. This service includes the monitoring of enquires and maintaining appropriate customer satisfaction records;
- (b) for processes and procedures which allow for logging and reporting, where required, and distribution of enquires to the appropriate areas for action; and
- (c) to comply with the Supplier's procedures and any requests outside the scope of services in relation to emergency or disaster recovery situations.

22 EMERGENCY (RAPID RESPONSE) VEHICLE RUNS

- 22.1 That the following rapid response services will be provided:

- (a) deliveries of stores throughout specified sites and externally on request;
- (b) delivery of conference room equipment to conference rooms from a central store; and
- (c) any similar service that requires a rapid response, where required.

23 VEHICLE MANAGEMENT, MAINTENANCE AND ADMINISTRATION

A booking service for pool cars and hire vehicles will be provided. This will include the undertaking of minor vehicle maintenance and the cleaning and checking of pool

vehicles, and the provision of monthly reports on pool and hire vehicle usage and regular reviews of the shuttle bus service.

24 ASSET MANAGEMENT PLANNING SERVICE

24.1 Provision of a service to allow for:

- (a) detailed plans relating to the following calendar year, the next five (5) years and a rolling programme is produced and maintained;
- (b) recording of all building plants and equipment used assets; and
- (c) the continuous maintenance of a forward maintenance asset register.

25 SPACE MANAGEMENT

25.1 Any requests relating to change will be managed and delivered in a timely manner and where required, solutions and actions to be developed, to ensure timely implementation of changes. Such change to include:

- (a) management of moves and movement of staff;
- (b) recommendations for the best use of space, including identification of surplus space;
- (c) receiving and responding to accommodation planning, change requests, and implementation of these;
- (d) maintenance of accommodation plans at specified locations; and
- (e) furniture asset management.

26 INTERNAL COMMUNICATION SERVICE

A service for maintaining internal communication is provided and updated on a regular basis to include notice boards, provision of desk drops, computer based information, location information, e.g., posters, newsflashes, special events.

27 LEISURE

27.1 Where already in existence, fitness suites, sports halls, excluding exercise and sports equipment, licensed bar, lounge area, café, equipment for darts, table tennis and pool discrete from operational areas are provided.

28 GENERAL SUPPORT

28.1 The provision of general support to include but not be limited to:

- (a) kitchen equipment – maintenance of kitchen equipment to comply with statutory regulations;
- (b) shower – maintenance of shower equipment;
- (c) electrical – minor electrical work;
- (d) handyman – minor maintenance, as and when required;
- (e) administration – assistance in terms of providing drawings, plans access permits, monthly services reports, continuous customer satisfaction surveys etc., where requested; and
- (f) business/Project Support – assistance and support covering audits, Supplier bids, third party projects, risk management etc., where requested.

PART B (NEP PREMISES)**50 MAIN SERVICES**

The Main Services, which NEP is contracted to provide under the relevant NEP Contract and which will benefit the NEP Premises are:

- 50.1 the provision of estate maintenance services in respect of the Estate and the Utilities Building, comprising:
- (a) building fabric repair and maintenance;
 - (b) mechanical and electrical operation, repair and maintenance to the plant and equipment and water quality assurance;
 - (c) grounds maintenance, including all hardwork and softwork repair and maintenance;
 - (d) pest control;
 - (e) window cleaning; and
 - (f) maintenance and testing of the fire protection system including firefighting equipment;
- 50.2 payment of all the existing and future rates, taxes, impositions, assessments and outgoings payable in respect of all parts of the Estate which do not comprise the NEP Premises or of which the Customer does not have exclusive rights of occupation or use under the relevant NEP Contract;
- 50.3 insure the Utilities Building in accordance with clause 19 of the NEP Contract, a copy of which has been made available to the Supplier; and
- 50.4 carry out works to the Utilities Building and the Estate in accordance with the provisions of the 'Estate Maintenance Services Agreement', a copy of which has been made available to the Supplier.

51 ADDITIONAL SERVICES**51.1 Car Parking**

The provision of car parking in accordance with and subject to the requirements and provisions of the 'Newcastle Estate Car Parking Policy'.

51.2 Ordering Small New Works and Services

For the duration of the Agreement, the Customer will consider Supplier requests for small new works and services, and if agreed between the Customer and the Supplier (where the agreement of the Customer shall not be unreasonably withheld), the Customer will use reasonable endeavours to procure such works and services on and subject to the terms of, and in accordance with procedures existing under, the relevant NEP Contract.

51.3 Porterage and Accommodation Services

The Customer will provide the following services, if required:

- (a) fork lift truck duties, when required; and
- (b) clearance of cardboard waste.

51.4 Mail, Messengers and Distribution Services

The Customer will provide the following services between 08:30 hours and 17:00 hours Monday to Thursday (and 08.30 hours to 16.30 hours on Fridays) excluding public holidays and some privilege days (provided that notice will be given to the Supplier of any changes in hours):

- (a) delivery, sorting and collection of internal and external mail;
- (b) removal of bagged-up confidential waste, as designated;
- (c) movement of supplies of photocopying paper; and
- (d) collect, sort and dispatch outgoing items.

51.5 Health and Safety Checks

The Customer will monitor compliance with the Health & Safety policy in all areas to which the Supplier is entitled to have access under the terms of the relevant occupancy agreement in respect of the NEP Premises, and will provide the following:

- (a) Annual fire inspection;
- (b) Administration of emergency procedures;
- (c) Fire Exit checks;
- (d) Annual H&S inspections; and
- (e) Site Security

In respect of site security, the service provided by the Customer will be the reasonable provision of the following:

- (i) provision of security passes for the NEP Premises;
- (ii) control of vehicular and pedestrian access to the site on which the NEP Premises are located;
- (iii) 24 hour, all year guarding;
- (iv) use of CCTV and intruder detection systems;
- (v) provision of incident control service;
- (vi) patrolling site-logged and timed Guard control Electronic Recording System (24 hrs);
- (vii) vehicle searches (subject to the relevant security policy from time to time);
- (viii) visitor escort (subject to the relevant policy from time to time); and
- (ix) provision of reception facilities at the main gate to the Longbenton estate and

also, during silent hours:

- (A) checking for electrical/ water hazards;
- (B) checking fire exits are clear and operational; and
- (C) receiving courier deliveries.

51.6 Site Services Liaison

The Customer will provide or procure the provision of a liaison point for:

- (a) site access system;
- (b) site security;
- (c) temporary and contractor passes;
- (d) emergency procedures;
- (e) conference rooms;
- (f) general Health & Safety;

- (g) use of PA system; and
- (h) operation of voice alarm systems.

51.7 Utilities

The Customer will procure the supply of electricity, gas and water, and the disposal of sewerage.

51.8 Catering Services

The Customer will procure catering services in the form of a restaurant facility and vending machines, Monday to Friday, throughout the year except for public holidays and some privilege days.

51.9 Conference Services

The Customer will provide efficient conference services and equipment to meet Supplier requirements.

51.10 Reception Services

The Customer will provide the reception services between the hours of 07.30 to 17.00 Monday to Thursday and 07.30 to 16.30 Friday, closed Saturday and Sunday.

- (a) The Customer shall provide an efficient reception service to Benton Park View, Longbenton by:
 - (i) ensuring that all visitors to Benton Park View have a point of contact and that all calls to reception are answered and dealt with appropriately;
 - (ii) managing and allocating reserved car parking for visitors and reserved parking for staff according to the provisions of the Newcastle Estate Car Parking policy; and
 - (iii) administering the lost property system.
- (b) The Customer shall:
 - (i) in respect of the atrium and entrance hall, corridors, lobbies, staircases, lavatories, access ways, passages and lifts within the Benton Park View building which are not comprised in the NEP Premises, undertake the cleaning, servicing, lighting and heating of any such areas;
 - (ii) make payment of all the existing and future rates, taxes, impositions, assessments and outgoings payable in respect of the areas specified in Section 2.10(b)(i) above;

- (iii) maintain contingency plans such that, in the event of a loss of accommodation (including the NEP Premises) it will take all reasonable steps to provide alternative accommodation; and
- (iv) clean the NEP Premises daily.

51.11 Required Environment

- (a) Output handling equipment areas within the NEP Premises must be fully air conditioned, with temperature and humidity controlled at the following levels:
 - (i) temperature between 18°C - 24°C; and
 - (ii) relative humidity between 40% - 70%.
- (b) Air handling plant must be installed and be capable of handling the levels of paper dust generated.
- (c) Temperatures in continuously occupied cellular office areas must not exceed the following parameters (at 1.5m above finished floor level and based on internal conditions):
 - (i) minimum of 18.5°C; and
 - (ii) maximum of 28°C (a failure rate of thirty (30) Working Days in a ten (10) year period must not be exceeded).

52 SERVICE AVAILABILITY

Unless otherwise stated in this Schedule 2.6 (**Accommodation**):

- 52.1 environmental and building services (being the services specified in Sections 2.7, 2.11 and (where appropriate) 2.5(e) above) will be provided to facilitate twenty-four (24) hour operations where such provision is required to enable the Supplier to provide the Services. The Customer cannot provide indefinite continuous operations but it will take all reasonable methods to give near to continuous operations. Agreed shut-down periods will be scheduled in advance; and
- 52.2 in exceptional circumstances or where the relevant occupancy agreement for the NEP Premises requires, it may be necessary for the additional services set out in Section 2 above to be reduced or cancelled for all or part of a Working Day. The Customer will endeavour to provide maximum notice of such interruptions to service and keep them to a minimum duration and will discuss alternative arrangements. Whenever possible, full discussion with the Supplier will be maintained.

53 CONTRACTOR RESPONSIBILITIES

The Supplier will comply with the reasonable rules, made in the interests of good estate management by the Customer acting reasonably and which shall be notified to the Supplier in writing.

ANNEX 2.6-5 - FM SERVICES**PART B****EXCEPTIONS TO FM SERVICES (STEPS PREMISES AND NEP PREMISES)**

In the tables below, the required services set out in the vertical column will be provided at the premises set out in the top row in all cases except where designated by the use of “N” in the relevant box.

[REDACTED]

ANNEX 2.6-5 – FM SERVICES

PART C

STEPS PREMISES

[REDACTED]

NEP Premises

The NEP Premises comprise those parts referred to Annex 2.6-1 forming part of the Utilities Building.

ANNEX 2.6-6**BUSINESS CONTINUITY FACILITIES TO BE PROVIDED BY THE CUSTOMER**

The Facilities at “Abbey House, Whitechapel Way, Priorslee, Telford TF2 9RG” will be provided by the Customer to the Supplier until 31 December 2020 on the following basis:

Category	Requirement
Site Access	<p>Designated Supplier staff will be given 24x7 365 access, and this will be managed by the Customer.</p> <p>The Facilities will be in an access-controlled area (secured with key card access) managed by the Customer</p> <p>Supplier to have limited access to the BC/Comms Room, for authorised staff as appropriate</p> <p>Customer to produce and maintain a documented process for how access to Abbey will be possible overnight and the times when the process will be active. I.e. Weekends and Bank Holidays</p>
Desks / Workstations	<p>Customer to provide 48 desks</p> <p>Customer to provide height adjustable desks if required</p> <p>Health & Safety team annually to ensure the facility is fit for purpose</p> <p>Customer to provide Floor Plan view of area with the BC Desks allocated</p> <p>Each desk to be allocated a chair and, on a reasonable endeavours basis, 4xMains Power Sockets</p>

Telephones	1 VOIP phone per desk, and/or hotdesk lines
Environment	Customer to provide access to hot and cold water, vending machines, kitchen and toilet facilities on 24 x 7 basis
Network Connectivity	<p>Live and Dev Connections to desks as agreed between the Parties</p> <p>Customer to provide guest Wi-Fi to enable appropriate VPN connectivity to Supplier Corporate Systems.</p> <p>The guest Wi-Fi password (and any updates) will be confirmed by Customer</p> <p>Limited network switch access for appropriate authorised staff will be required for re-patching</p>
Printers	<p>Customer to provide a location/power to house a Supplier printer.</p> <p>Customer to provide Customer Network Printer</p>
Security	<p>The area is restricted via access control and a restricted access manager has been appointed by Customer. A signing in book has been provided</p> <p>Signing in/log book available for the BC Area for visitors</p>

Help Card	Customer to produce Help Card with Site information on use of Facilities and including, for example details on First Aiders, Alarm Testing, Local Hotel contact details, postal collection times, summary of facilities – Fire evacuation point, Toilets, Drink Machines etc.
Secure Storage	Customer will provide Secure storage cupboard,
Utilities	Customer to procure utilities for the accommodation at no charge to Supplier



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SCHEDULE 2.7 | Service Recipients

Schedule 2.7 | Service Recipients

1. INTRODUCTION

This Schedule lists:

the Service Recipients to which the Supplier has agreed that it shall provide Services in accordance with Clause 44 of this Agreement.

#	Services Recipient	Requirements
1.	Isle of Man Customs Services	As agreed with the Supplier all Former HMCE services are made available (via 2mb leased circuit over the HMRC Contracted Infrastructure) to Isle of Man customs service, including CCG services.
2.	Border Force (BF)	Formerly a part of HMCE, Border Force as agreed with the Supplier retained their requirement to access HMRC services when BF were created as a separate Government agency and as such required continued user access to the VME services.

The Parties acknowledge and agree that this Schedule may be updated from time to time, pursuant to the Change Control Procedure, in order to:

- (a) add additional Service Recipients; or
- (b) remove Service Recipients.



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SCHEDULE 2.8 | Data Processing and List of Sub-Processors

Schedule 2.8 | Data Processing and List of Sub-Processors

INTRODUCTION

Part A of this Schedule lists the types of Personal Data and categories of Data Subject which the Supplier will Process in its provision of the Services together with a description of the nature, purposes and duration of the Processing, the subject matter of the Processing, and the retention policy in respect of that data, and has been collated and agreed by the Parties in accordance with Clause 23.2(a) and (b).

Part B of this Schedule lists the Sub-Processors agreed by the Parties in accordance with Clause 23.5.

Part A | Data Processing

1. The Supplier shall comply with any further written instructions with respect to Processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Contents
Subject matter of the processing	Processing in order for the Supplier to provide the services that the Supplier is contracted to supply or requested to supply under the Agreement to support the collection of taxes, the payment of benefits and such ancillary activities as are required of, or exercised by, HM Revenue and Customs under its statutory functions or otherwise (as further described in the Service Requirements).
Duration of the processing	For the length of this Agreement
Nature and purposes of the processing	<p>Any processing undertaken by the Supplier pursuant to, or in connection with this Agreement, and in order to support HMRC in its activities for the assessment and collection of taxes, including but not limited to:</p> <ul style="list-style-type: none">• Corporation Tax;• Capital Gains Tax;• Inheritance Tax;• Insurance Premium Tax;• Petroleum Revenue Tax;• Environmental taxes;• Stamp Duty and Land taxes;• Climate Change Levy;

	<ul style="list-style-type: none"> • Aggregates Levy; • Landfill Tax; • VAT, including import VAT; • Customs Duty; • Excise duties; • National Insurance contributions; <p>the assessment and payment of Tax Credits and Child Benefit;</p> <p>the enforcement of the National Minimum Wage;</p> <p>the recovery of Student Loan repayments;</p> <p>the preparation of Trade Statistics; and</p> <p>anything necessary or expedient in connection with the exercise of HMRC's functions, or incidental or conducive to the exercise of HMRC's functions or otherwise requested by HMRC.</p>
Type of Personal Data	<p>Such types of personal data as are being processed pursuant to the Agreement, including but not limited to:</p> <ul style="list-style-type: none"> • personal contact details such as name, title, addresses, telephone numbers, and personal email addresses; • gender; • marital status and dependents; • national Insurance number; • bank account details; • income; • employment; • business activities; • domestic and business properties; • biometric data, such as voice recognition data; • information about criminal convictions, allegations and offences, where relevant in relation to HMRC's functions.
Categories of Data Subject	<p>Those identified or identifiable natural persons who are the subject of the processing undertaken pursuant to the Agreement, including but not limited to:</p> <ul style="list-style-type: none"> • Members of the public • customers and clients • businesses

	<ul style="list-style-type: none">• suppliers and service providers• advisers, consultants and other professional experts• complainants and enquirers• agents and representatives• relatives, children, guardians, dependents and associates• offenders and suspected offenders• HMRC employees.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Supplier shall return or delete any data as part of decommissioning as a Fujitsu Project Service and or as agreed and specified in an Exit Plan in place or an Exit Plan agreed at contract termination.

Part B | Sub-Processors as at The Effective Date

[REDACTED]



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SCHEDULE 2.9 | Service Infrastructure Updating

Schedule 2.9 | Service Infrastructure Updating

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"SERVICE CRITICAL REFRESH" OR "SCR"	[REDACTED]
"LEGACY LIST"	[REDACTED]
"SERVICE INFRASTRUCTURE"	means the infrastructure (including the Technical Infrastructure) including hardware and software, connectivity and other items used or required by the Supplier to enable the Supplier to provide the Fujitsu Services to the Authority;

2 INTRODUCTION

This Schedule sets out the ways that the Parties have agreed to operate and update the Service Infrastructure for the provision of the Fujitsu Services in the context of the Exit Context and generally.

The Parties agree to deal with determining the approach to refreshing and updating the Service Infrastructure in accordance with this Schedule and to regulate the consequences of decisions reached in respect of such refreshing or updating of the Service Infrastructure in accordance with this Schedule.

The Parties agree to apply the consequences to:

- a) Relief for the Supplier generally in accordance with Section H (Remedies and Relief) in the Agreement;
- b) Relief from Performance Levels in accordance with Section H (Remedies and Relief) in the Agreement and Schedule 2 Service Requirements;
- c) Responsibility for Appropriate Measures from a Data Processing perspective; and
- d) Reputational risk in accordance with this Schedule.

3 TECHNICAL GOVERNANCE

- 3.1 The Customer has responsibility for the transformation or refresh of the Technical Infrastructure (with an exception for the FAST Services in accordance with paragraph 6.13) and for decisions as to when to transform the Technical Infrastructure.
- 3.2 The Supplier's obligations are limited to those set out more generally in Schedule 2 (Service Requirements), this Schedule and Schedule 7 (Financial Matters).

- 3.3 The Supplier shall provide information, as anticipated by this Agreement, to the Customer to enable the Customer to make decisions as to how to update the Service Infrastructure.
- 3.4 In accordance with the Supplier's reporting obligations, the Supplier shall provide the Customer with the following:
- (a) Technical Infrastructure Deployment: an extract from its asset database (FAD) detailing the Technical Infrastructure deployed on the estate, versions (where applicable) and known end of support/end of life dates (ASUD);
 - (b) Service Offering Roadmap: details of future Supplier service offerings and technologies together with their associated features and availability dates;
 - (c) Supplier Technologies: the Supplier's roadmap for Supplier owned tools and assets which are not detailed in the FAD (e.g. EM toolsets),
- (together the "Technology Roadmap").
- 3.5 If the Customer requests the Supplier to undertake any further work or analysis of the information provided, such effort shall be chargeable on a T & M basis.
- 3.6 The Parties will discuss in good faith within 90 days of the signature date of this Agreement any changes which may be required in relation to the Technology Roadmap and will detail the same by amendments of this Schedule through the Change Control Procedure.

4 FUJITSU SERVICES DELIVERY BOARD

- 53.1 The Customer shall use Commercially Reasonable Efforts within 90 days of the signature date of this Agreement to establish the Fujitsu Services Delivery Board. Upon establishment of the board the Parties shall agree the frequency of the board and issue terms of reference and an agenda.
- 53.2 The purpose of the board is to review the Technology Roadmap and any Supplier inputs and determine the Customer's approach to any transformation or refresh of the Technical Infrastructure.
- 53.3 Once the board has been established the Parties will incorporate the board into Schedule 8 (Governance) through the Change Control Procedure.
- 53.4 The Parties will discuss in good faith any changes or further boards or meetings, including any multi-party forums (which may include other ICT Suppliers) which may be required within 90 days of the signature date of this Agreement and will detail such into this Schedule through the Change Control Procedure.

5. MANAGEMENT OF THE TECHNICAL INFRASTRUCTURE

- 5.1 The Supplier shall:

- (a) identify and inform the Customer periodically of future technologies that would benefit the Customer in terms of business performance, cost, alignment with business strategy, new business opportunities and improved service;
- (b) Through the provision of the Technical Infrastructure Deployment report, promptly advise the Customer where it believes that technologies utilised in delivering the Services Requirements to the Customer are likely to become unsupportable by the marketplace and therefore may lead to ongoing sole reliance on the Supplier for support;
- (c) in respect of elements of the Technical Infrastructure under the Supplier's control, and subject to the Customer:
 - commissioning projects to enable the refresh of Technical Infrastructure prior to such Technical Infrastructure reaching End Of Service Life; and
 - informing the Supplier of any application reliance on technologies and versions of technologies, ensure that the Technical Infrastructure in all locations remains efficient, reliable and serviceable.

ensure that the Technical Infrastructure in all locations remains efficient, reliable and serviceable.

- (d) in respect of utilities and systems software or COTS software for Service Lines for which the Supplier is wholly or partly responsible, promptly bring to the Customer's attention the release of any new versions of third party software and identify the impact of such releases on the relevant third party vendor's support strategy, including any instances where software versions are about to become technically obsolescent.

6 IMPACT OF TRANSFORMATION / UPDATE DECISIONS

- 6.1 The Customer shall, at its option, determine which assets it will transform and the timescales for any such transformation and shall communicate its decision to the transformation of the Technical Infrastructure to the Supplier.
- 6.2 Where the Customer approves the transformation of an item of Equipment, it will request a proposal from the Supplier in accordance with the Fujitsu Process Document. The preparation of the proposal by the Supplier is chargeable effort which may be paid on a T & M basis or through the use of the Retained Fund as set out in Schedule 7 Financial Matters.
- 6.3 Such proposals may detail:
 - proposed technologies to be replaced;
 - proposed replacement technologies;
 - proposed timescales;

- benefits of replacement;
 - cost estimates;
 - impact on the service;
 - technical skill sets required;
 - impact on Service Levels or proposed new Service Levels; and
 - alignment with the Customer transformation strategy.
- 6.4 On receipt of the Supplier's proposal the Customer shall, in its sole determination, decide whether or not to proceed with the transformation or refresh.
- 6.5 Where the Customer decides to proceed it will commission the Supplier to proceed. The Supplier's Project effort shall be chargeable effort which may be paid on a T & M basis or through the use of the Retained Fund as set out in Schedule 7 Financial Matters.
- 6.6 The Supplier shall contribute to an integrated delivery plan, including detailing non-commercial assumptions, dependencies, risks, issues and constraints (including working with other ICT Service Suppliers) and provide progress updates to the Customer and other ICT Service Suppliers against the plan as agreed.
- 6.7 The Supplier shall have no liability toward the Customer or any other ICT Services Suppliers for any other parties' costs in relation to the transformation of the Technical Infrastructure (where such transformation is directed by the Customer) other than where the Supplier requests support from an ICT Services Supplier in relation to the development or implementation of a new capability, not requested by the Customer, and initiated by the Supplier from which the Supplier may derive benefit unrelated to the Customer (e.g. for the provision of pan-Governmental or shared services) or as otherwise set out in the Agreement.
- 6.8 Where the Customer chooses not to transform or refresh a particular component of the Technical Infrastructure, the Business Applications or the Equipment which is nearing or beyond the End Of Service Life (a "No Refresh Decision" or "NRD"), then:
- (a) the Supplier will communicate to the Authority the known impact or, where this is not known, a high level view of the potential or likely impact of the No Refresh Decision on the Services or the Supplier's costs. For the purposes of this Section 6.8;
 - (i) where the Customer requests an NRD Impact Analysis, the time period set out in Clause 15.2.b (ii) shall be superseded by the time period agreed between the Parties for the provision of the NRD Impact Analysis set out in Section 4.10 of this Schedule 19 (Technical Infrastructure); and
 - (ii) where the Customer does not request an NRD Impact Analysis the Supplier shall perform its obligations under Clause 15.2.b (ii), the time period for such performance shall be agreed between the Parties acting

reasonably; and

- (b) the Supplier's obligations under this Agreement in respect of such Technical Infrastructure, Business Application or Equipment component and any Services Requirements relating thereto shall continue to apply, save (subject to Section 4.11) to the extent that the Supplier can demonstrate by root cause analysis or otherwise that the No Refresh Decision has directly resulted in an adverse effect to the Services Requirements or the Supplier's costs, in which case any such effect shall be treated as and deemed to be a Compensation Event (and for clarity, should the test in this Section be satisfied, this would constitute a Compensation Event caused by the Customer and would be subject to Clause 15.2).

6.9 If the Customer requests further analysis from the Supplier as to the impact of a No Refresh Decision, it will request such from the Supplier in accordance with the Fujitsu Process Document. The preparation of the impact analysis by the Supplier is chargeable effort which may be paid (at the Customer's option) either as P04 as set out in Schedule 6 (Charges) or through the Retained Fund as set out in the Fujitsu Process Document. Following a request from the Customer the Supplier shall (acting reasonably) within ten (10) Working Days (or, if such timescale is not reasonably practicable due to the scope of the No Refresh Decision, such period of time as the Supplier notifies and is agreed by the Parties) of receipt of such request prepare and send to the Customer an impact analysis ("NRD Impact Analysis") setting out in writing the likely consequences of the No Refresh Decision and its proposals for any alternative mitigating action that may be taken (including any consequential third party costs in respect of the same, if any) ("Mitigating Actions") either, where possible, to ensure that there is no adverse effect on fulfilment of the Services Requirements ("Full Mitigating Actions") or partially to mitigate the consequences of the No Refresh Decision ("Partial Mitigating Actions").

6.10 Unless, following receipt of the NRD Impact Analysis the Customer reverses its No Refresh Decision, then to the extent that the Supplier, upon written request of the Customer, undertakes any Mitigating Actions as a result of the No Refresh Decision:

- (a) where the Mitigating Actions result in additional Supplier costs or third party costs, the Supplier shall be entitled to charge the Customer for the same in accordance with the costs set out in the applicable NRD Impact Analysis;
- (b) where these are Full Mitigating Actions the No Refresh Decision shall be deemed not to be a Compensation Event; and
- (c) where these are Partial Mitigating Actions, the applicable adverse effect to the Services Requirements shall only be treated as and deemed to be a Compensation Event to the extent that the Supplier can demonstrate as part of the root cause analysis or other process carried out under Section 4.9(b) above that the Partial Mitigating Actions could not reasonably have prevented the same.

- 6.11 The provisions of this Schedule shall not apply to Supplier owned Tools.
- 6.12 To the extent that any proposed transformation of the Technical Infrastructure involves a Hosting Investment, the Parties shall comply with the provisions of Clause 16.8 (Investment Review Board).
- 6.13 In respect of the FAST Services the Supplier acknowledges that it has the primary obligation of updating the Service Infrastructure required to deliver those Services. This obligation was assumed historically on the basis that the costs of investing in such Service Infrastructure and updating it would be recovered over a longer period than that now agreed for the Fujitsu Services. Accordingly, the Parties have agreed that in respect of the Fast Services decisions and expenditure on updating the Services Infrastructure for the FAST Services will remain with the Supplier but subject to the recovery of Committed and Unrecovered Costs in accordance with Schedule 7 Financial Matters.

7 SERVICE CRITICAL SERVICE INFRASTRUCTURE REFRESH

- 7.1 Where the Supplier reasonably determines that additional investment in some technology refresh or Service Infrastructure updating is reasonably required, in order to maintain the Fujitsu Services and/or meet the Performance Levels beyond a given date, and in order to protect both parties from potential operational and or reputational risk, this will be raised by the Supplier with the Customer at least 90 days before that given date (or as soon as is reasonably practicable if the Supplier has itself received insufficient notice to allow this).
- 7.2 The circumstances where Fujitsu may determine that some technology refresh or Service Infrastructure updating is reasonably required include:
- (a) Fujitsu is unable to provide an effective and reliable service (i.e. the service will not operate effectively and or a failure rate is expected which is reasonably likely to be abnormally high by comparison with Good Industry Practice);
 - (b) The Supplier shall be unable to recover the Service Infrastructure in the event of a failed component or components;
 - (c) Appropriate vendor support (or replacement suitable third party support) is unavailable to enable the Service Infrastructure to function in accordance with the Performance Levels or so as to enable the Supplier to meet its other obligations under this Agreement;
 - (d) Spare or consumable parts that are required to enable the Service Infrastructure to operate and or recover from a failure are no longer readily available;
 - (e) Software being utilised as part of the Service Infrastructure requires a platform upgrade or a version to mitigate a potential license breach and/or maintain

availability of the software; and

- (f) Fujitsu cannot effectively operate or support the service due to aged tools or products, that mean vulnerabilities cannot be detected or remedied.

7.3 The Parties shall consider how the investment in Service Infrastructure updating (including for the avoidance of doubt the need for updating of items already on the Legacy List or subject to an NRD) shall be dealt with having regard to:

The Supplier's existing refresh obligations in respect of the relevant Services existing as at the 30th June 2022 in respect of the Expired Services under the Prime Agreement and or the Supplier's refresh obligations in respect of the relevant Additional Services existing as at the 31st March 2023 in respect of the Additional Services under the 2020 Services Agreement;

The agreement on recovery of Committed and Unrecovered Costs set out in the above agreements and the ability of the Supplier to recover the additional investment as Committed and Unrecovered Costs; and

The arrangements set out below in respect of "New Investment" at paragraph 8.

7.4 In response the Customer shall within a reasonable period make and communicate its decision to either:

- (a) Dispute whether a SCR event is in prospect and set out in full its reasons for the challenge which shall be based on its analysis of the risks and its proposed mitigations;
- (b) fund the SCR project needed to implement the Service Infrastructure updating required and allow the Supplier a reasonable time to implement the updating and providing appropriate relief if the implementation cannot be completed in time for mitigation of the associated SCR risks; or
- (c) If the Customer does not confirm its wish to fund such SCR updating (either by way of a new investment or by future payment of Committed and Unrecovered Costs) the Customer shall be deemed to accept that the Supplier shall be relieved from all responsibility for delivering any relevant aspect of the Fujitsu Services in circumstances where the lack of SCR updating impacts (or is likely to impact) resultant quality of any aspect of the Fujitsu Services. In such circumstances the Supplier's relevant Performance Level obligations shall be excused and no service credits shall apply or be payable in such circumstances in respect of relevant impacted Fujitsu Services and the items in need of updating shall be added to the Legacy List.

7.5 The Customer will already be aware of aspects of the Additional Services where a lack of historic refresh is already an issue. All existing releases of liability or obligations available

to the Supplier in respect of the Expired Service and or the Additional Services in respect of such shortcomings and or lack of Service Infrastructure updating prior to the Effective Date (including the Legacy List) shall apply to the Fujitsu Services as they did to the Expired Services and or Additional Services.

7.6 In addition, in order to keep the Parties aligned the Supplier shall provide an updated view of Service Infrastructure updating needed and or service critical refresh required or likely to be required for the Fujitsu Services based on the information that is currently available to the Supplier. Then

- 1.1.1.1 The parties will meet at least 28 days prior to the effective Date and then every month to review the refresh position in respect of the Fujitsu Services.
- 1.1.1.2 The Supplier will present an updated view of future refresh requirements and recommendations in order to protect and secure the Customer's business services. The Parties shall then agree as to which refresh projects should progress.
- 1.1.1.3 In default of a refresh being completed the Customer shall be deemed to accept that the Supplier shall be relieved from all liability resulting from the lack of refresh in the delivery of the relevant aspect of the Fujitsu Services in circumstances where the lack of refresh impacts service quality and no service credits shall apply.

8 NEW INVESTMENT

8.1 The approach and recent practice previously taken for the Additional Services will continue for the Fujitsu Services, where the Customer has committed to pay a sum in respect of hardware depreciation and unrecovered costs that represents the amount that the Supplier will not otherwise recover by way of Fujitsu Services Charges, but with a more standardised and flexible mechanism.

8.2 Where the Supplier needs to invest in order to support the provision of the Fujitsu Services, for example in support of business critical refresh or to implement change requests from the Customer, this will be raised with the Customer, and the Parties will agree whether to take an investment forward.

8.3 Where with the agreement of the Customer an investment is made:

- (a) Any new third-party contracts required to support the relevant Fujitsu Service covered by the TVBC will be added into the third-party contract costs within the Flexible Collar; and
- (b) Any new assets purchased to support the service covered by the TVBC will have their depreciation added into the depreciation costs within the Flexible Collar; and
- (c) Any Committed and Unrecovered Costs will be covered (as outlined above).

8.4 Any existing payments under the Prime Agreement relating to the depreciation of

equipment for the Expired Services will continue to apply under this Agreement , to reflect and as appropriate extend arrangements under the Prime Agreement.

- 8.5 Any sum in respect of new investment not recovered via the Charges or the Fujitsu Services Charges or an investment that will not immediately be used as part of the Fujitsu Services so that they are charged to the Customer will be recovered by the Supplier in the same manner as those existing arrangements.

9. SERVICE CRITICAL REFRESH PROCESS

- 9.1 The Parties have agreed the following process for a programme of Business Critical Refresh which shall apply to the Additional Services and after the Effective Date shall also apply to the Fujitsu Services.

- 9.2 The Supplier shall present a list of Service Critical Refresh projects with details of the activity required for the Authority to review.

(a) The Supplier shall clearly set out the reasons why it believes each project is required and critical and shall also submit details of any risk assessment conducted if requested by the Authority. Such risk assessments shall be based on a Gartner technical debt assessment methodology or similar.

(b) The Supplier shall also present a view as to the funding needed from the Authority for each Business Critical Refresh project should be funded based on investment type as set out in the following table:

[REDACTED]

- 9.3 SCR projects will be reviewed on a monthly basis after the Effective Date.

- 9.4 Where the Authority rejects any of the proposed projects because it does not believe the operational risk will have a significant impact on the Authority's business services then the Authority shall explain the basis on which it has reached such a conclusion and its proposals as to how to mitigate and deal with the risks associated with such a choice including how SoTF proposes to deliver a solution.

- 9.5 Pending agreement by both Parties as to how to progress in that situation the Default position shall be that Fujitsu is entitled to relief in accordance with the following:

- (a) Relief for the Supplier generally in accordance with Section H (Remedies and Relief) in the Agreement;
- (b) Relief from Performance Levels in accordance with Section H (Remedies and Relief) in the Agreement and Schedule 2 Service Requirements;
- (c) Responsibility for appropriate technical measures to guard against unauthorised or unlawful Processing of the Personal Data, Personal Data

Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data (including as relevant to the Services Requirements in accordance with Article 32 of the GDPR).

10 LEGACY LIST

- 10.1 The Supplier shall report to the Authority quarterly in respect of the Legacy List and shall provide the latest version of the Legacy List and the Supplier's proposed changes to the Legacy List.
- 10.2 The Parties shall promptly meet to agree how to resolve proposed changes to the Legacy List in accordance with the Service Critical Refresh Process.
- 10.3 The Customer waives any requirement for the Supplier to provide Early Warning under this Agreement in respect of the Legacy List.
- 10.4 The listing of an item on the Legacy List shall mean that:
- a) the Supplier is not under any obligation to remedy any resultant S18 Security Discrepancy until the Authority has agreed to remedy the same at its own expense;
 - b) in addition to any rights and remedies available to the Supplier under this Agreement as a result of a Relief Event and or Relief Event Compensation:
 - c) the Supplier shall be relieved from liability due to any failure to perform any of its obligations in respect of Data Protection or under the Relevant Data Protection Laws to the extent that such failure is attributable to any items listed on the Legacy List, to the extent that the applicable liability arose or increased as a result of the relevant attribute which had led to the item's inclusion on the Legacy List or merited it remaining there. (The Parties acknowledge that the Legacy List items are an exception to the Appropriate Measures obligations and constitute a Security Discrepancy;
 - d) the Supplier shall be relieved from liability that arises from a claim or complaint made by any third party (including without limitation any Data Subject or supervisory authority) with regards to Supplier's Processing of Personal Data under this Agreement to the extent that such actions result from any items listed on the Legacy List, to the extent that the applicable liability arose as a result of the relevant attribute which had led to the item's inclusion on the Legacy List or merited it remaining there and the Authority shall be liable for all Losses, fines and/or expenses incurred by the Supplier as a result;
 - e) The Supplier is entitled to relief in respect of Performance levels for Failure of an item of Service Infrastructure or Operating System Instance that is included on the Legacy list, for a reason attributable to those attributes that led to its inclusion on that list or would merit it remaining there.
 - f) When considering any obligation on the Supplier in respect of Incident management and restore obligation the Supplier may exclude incidents in respect of servers or

Operating System Instances which are on the Legacy List from calculations if the incident is related to the flaky reason or otherwise attributable to those attributes that led to its inclusion on that list or would merit that server or OSI remaining there.

11 COLLABORATION AND REQUIRED BEHAVIOURS

- 11.1 The Authority acknowledges that it is entering into this Agreement for the Fujitsu Services in a spirit of partnering with the Supplier to extend the operation and duration of services as Fujitsu Services and solve an issue of national importance by ensuring the Fujitsu Services are available.
- 11.2 In these circumstances the Authority acknowledges the risks associated with requesting such extended service life and the Authority agrees that in operating the SCR process it shall use its reasonable endeavours to support a low risk approach within the known constraints.
- 11.3 Should the Authority not meet its obligations arising as a result of this Schedule 2.9 then the Supplier reserves the right to renegotiate the commercial aspects and timelines applicable to the Fujitsu Services and or escalate the issues for resolution via the Dispute Resolution Procedure.
- 11.4 The Authority shall ensure that all its arrangements and agreements with the Supplier in respect of the SCR process will be transparent in their assumptions, including commercial and financial assumptions associated with risks, and accelerate joint agreements on positions that offers the Supplier the necessary refresh opportunities needed for the ongoing provision of the Fujitsu Services.

12 TWO WAY INFORMATION AND COLLABORATION

- 12.1 Where the Authority becomes aware of an event or incident that that could impact on the performance of the Fujitsu Services or the performance of services by any other supplier(s) to the Authority, the Authority shall, as soon as reasonably practicable, communicate to the Supplier such failure or likely failure.
- 12.2 The Authority shall work collaboratively with the Supplier to enable satisfactory delivery of the Fujitsu Services; the orderly provision of the Fujitsu Services and do what is reasonably necessary to integrate systems and the services provided under this Agreement with the Authority's other relevant systems and services;

13 PUBLICITY

- 13.1 The Authority recognises that these nationally important Fujitsu Services are capable of attracting publicity for both Parties. The Supplier acknowledges this but believes that with the right approach from the Authority the Parties can ensure a satisfactory outcome. In those circumstances:
 - (a) The Authority shall not unreasonably seek to blame the Supplier for service failures arising from any lack of SCR and the Legacy List that result from decisions by the

Authority but shall support the Supplier in the resolution of incidents and problems relating to the delivery of relevant aspects of the Fujitsu Services impacted as a result;

- (b) The Authority shall be accurate, and transparent in any explanations given in respect of any service issues or failures resulting from the risks arising from the Authority's refresh and SCR decisions and or the Legacy List;



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SCHEDULE 3 | Authority Responsibilities

Schedule 3 | Authority Responsibilities

1. INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the "Authority Responsibilities" under this Agreement. The Customer Dependencies set out in this Agreement and in this Schedule detail the actions the customer shall take to enable the supplier to deliver the Services.
- 1.2 The responsibilities of the Authority specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2. GENERAL OBLIGATIONS

The Authority shall:

- (a) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and any Termination Assistance Period;
- (b) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement required to enable the Supplier to deliver the Fujitsu Services and Fujitsu Project Services;
- (c) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority;
- (d) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed) or required by this Agreement;
- (e) comply with all its obligations set out in this Agreement in a timely manner, and review, agree and approve the relevant activities, procedures, decisions, plans, designs and/or specifications (that are or have been submitted to the Customer by the Supplier pursuant to the relevant business requirement in Schedule 2 Services Requirements) in accordance with the Customer's responsibilities as set out in the Agreement and Schedule 2 (save that the Parties agree that notwithstanding the generality of the foregoing and/or any responsibility specified as a Customer responsibility in Schedule 2 that requires the Customer to agree, approve or sign-off on a matter proposed or provided by the Supplier, including but not limited to any plan, design, specification,

project or proposal submitted by the Supplier, such agreement by the Customer shall be subject to the relevant matter being acceptable to the Customer, any acceptance criteria that are required to be met or any process that is required to be completed before such matter is agreed, approved, or signed-off);

- (f) respond promptly to all reasonable requests for information raised by the Supplier;
- (g) participate in processes and activities that are to be carried out jointly by the Parties, as described in this Agreement including Schedule 2 (Service Requirements);
- (h) identify the relevant points of contact within the Customer who are the interfaces with the Supplier's points of contacts;
- (i) consider and where acceptable approve procedures and plans submitted by the Supplier within the timescales agreed by the Parties;
- (j) ensure the appropriate Customer personnel attend meetings relating to the Services under Schedule 2 (Service Requirements), and generally where required in accordance with this Agreement, as applicable;
- (k) provide input where appropriate relating to the Customer's future plans and business continuity requirements as reasonably requested by the Supplier;
- (l) provide indicative business growth forecasts including data volumes and business change as reasonably requested by the Supplier;
- (m) in accordance with Schedule 2, provide the relevant access to the Supplier's engineers executing their required tasks as required under the Agreement; and
- (n) without prejudice to the Supplier's obligation to comply with the relevant standards, policies and procedures set out in this Agreement, the Customer shall promptly update the Supplier regarding any new or amended policy, process and standards changes required by the Customer.

3 SPECIFIC OBLIGATIONS

The Authority shall, in relation to this Agreement, perform the Authority Responsibilities identified as such in this Agreement the details of which are set out below:	Document Location



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SCHEDULE 4.1 | Supplier Solution

Schedule 4.1 | Supplier Solution

[REDACTED]



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SCHEDULE 4.2 | Commercially Sensitive Information

Schedule 4.2 | Commercially Sensitive Information

[REDACTED]



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SCHEDULE 4.3 | Notified Sub-Contractors and Key Sub-Contractors



Schedule 4.3 | Notified Sub-Contractors and Key Sub-Contractors

- 1 In accordance with Clause 15 (Supply Chain Rights and Protections), the Supplier is entitled to sub-contract its obligations under this Agreement to the Sub-Contractors and Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Sub-Contractors and Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services. As at the date of signature of this Agreement there are none.
- 3 Notified Key Sub-Contractors

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
					[Level 1]

4. Notified Sub-Contractors

Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
					[Level 1]



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SCHEDULE 4.4 | Third Party Contracts

Schedule 4.4 | Third Party Contracts

- 1 Information in respect of third party contracts is reviewed by the Supplier and the Authority on a monthly basis at the Commercial & Finance Governance (XCFA) meeting when Third Party contract data for all contracts exclusively in support of the Fujitsu Services are presented. The information provided includes the Third Party Supplier name, contract start and end dates, contract renewal periods, contract values, renewal status. Third Party contracts are review in two tranches, those of contract value >£100k and those of value <£100k.
- 2 The meetings are attended by representatives from HMRC and the Suppliers operational delivery management, finance and commercial functions and the standing agenda includes consideration of Third Party contract renewals. Actions are recorded, tracked, and reported at subsequent monthly meetings.
- 3 The contracts identified above and agreed from time to time between the Parties shall constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 4 The Supplier shall be entitled to update this Schedule in accordance with the Agreement.



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SCHEDULE 4.5 | Assets

Schedule 4.5 | Assets

1.1 Whenever, pursuant to this Schedule 4.5 Assets, the Supplier transfers Equipment to the Customer (or to its nominee) the Supplier shall provide the Customer with:

- (i) all relevant and available documentation, user manuals and other such information; and
- (ii) suitable warranties regarding condition and performance, and

(unless otherwise agreed by the Parties) the Supplier shall ensure that all leasing, rental and other similar arrangements have been fully terminated. The Supplier shall transfer full and unencumbered title (with full title guarantee) to the transferring Equipment or (if otherwise agreed between the Parties) other arrangements satisfactory to the Customer shall be implemented.

1.2 Throughout the Term of the Fujitsu Services, the Supplier shall keep (and shall use Commercially Reasonable Efforts to ensure that any Subcontractors keep) any Equipment that is exclusively dedicated to the fulfilment of the Fujitsu Services separately identified from the other property of the Supplier and of third parties.

1.3 In the fulfilment of the Services Requirements, the Supplier shall not (and shall use Commercially reasonable Efforts to ensure that its Subcontractors shall not) use, without the Customer's prior written consent, any Equipment which is not exclusively dedicated to the fulfilment of the Services Requirements ("Shared-use Equipment") provided that the Supplier shall be entitled to use, in the fulfilment of the Services Requirements, Shared-use Equipment which forms, or is to be provided as, part of the Supplier's Solution as at the Effective Date (as set out in Schedule 4.1 (Supplier's Solution)).

1.4 If the Supplier proposes to deliver any of the Supplier's Solution through the use of any additional Shared-use Equipment other than as permitted under paragraph 1.3, it shall notify the Customer in writing and seek the Customer's agreement to such use. Following receipt of such notice, the Supplier shall attempt to demonstrate to the Customer that the use of such Shared-use Equipment satisfies the security requirements (as set out in Schedule 2.4 (Security Management)) and the Customer's requirements in connection with its ability to avoid lock-in to the Supplier's Solution and to achieve exit from this Agreement. If the Customer agrees to the use of additional Shared-use Equipment, the Parties shall update the listing of Shared-use Equipment. If the Parties fail to agree on such changes within twenty-five (25) days, the matter shall be referred for resolution in accordance with the Escalation Process and Dispute Resolution Procedure.

1.5 With respect to Assets existing at the Effective Date or other Customer owned or leased equipment which is made available by the Customer to the Supplier during the Term (in respect of which title is not transferred to the Supplier):

- (a) the Customer grants or shall procure the granting to the Supplier the right to

- access and use such Assets or the Customer owned or leased equipment (without charge) solely to the extent necessary for fulfilling the Services Requirements during the Term;
- (b) the Supplier acknowledges that it has no legal or equitable claim to such Assets or the Customer owned or leased equipment and agrees not to contest ownership of such Equipment;
- (c) the Supplier shall not, and shall not attempt to, pledge, charge, encumber or create any other interest by way of security in such Assets or the Customer owned or leased equipment; and
- (d) to the fullest extent permitted by Law, the Supplier waives any rights which it may have to take or seek a lien over such Assets or Customer owned or leased equipment for any sums due from the Customer to the Supplier pursuant to this Agreement.

1.6 In consideration of the Customer entering into the Agreement and subject to this Schedule the Supplier hereby grants to the Customer (which it may exercise itself or by its nominee) the following options:

- (a) **in the event of a Termination (but not expiry):**
 - (A) the Customer may (but shall not be required to) purchase all or any of the Equipment (excluding Nominal Value Equipment, Shared-use Equipment and Equipment used to deliver the S04 and S18 FAST Commodity Cloud (FAST-P) Service). In the event of the exercise by the Customer of this option, the aggregate consideration payable shall be determined in accordance with Clauses 29.6 below; and/or
 - (B) the Customer may not (unless agreed by the Parties in writing) purchase any of the Equipment used to deliver the S18 FAST-DB (Oracle) Service or FAST-DA Service or S26 Services (subject to 10.1(g) (i) (E) below); and/or
 - (C) In respect of Equipment used to deliver the Tower Solution:
 - 1) the Equipment which delivers the storage elements of the Tower Solution shall be subject to the terms of S04 Services; and
 - 2) the Equipment which delivers the application elements of the Tower Solution shall be subject to the terms of S18 FAST Commodity Cloud (FAST-P) Service.
- (b) In the event of a Termination or Removal of Service in respect of S04 Services which occurs pursuant to the expiry of this Agreement on or after the Effective Date, the Customer shall be entitled to exercise the option set out in this Schedule in respect of the Equipment as at the date of such

Termination or Removal of Service. The Supplier shall provide to the Customer information in relation to such Equipment as reasonably required. The aggregate consideration payable for such Equipment shall be a sum equivalent to the Net Book Value of an Assets (excluding consumables for which the Customer shall pay a sum equal to Fair Market Value). Title to the applicable Assets shall pass pursuant to, and in accordance with this Schedule provided that the said sum shall exclude any payment in respect of Nominal Value Equipment.

- (c) Where the Customer exercises its rights to purchase Equipment in respect of which title is vested in the Supplier and any collateral agreement entered into in connection with it, the amount of any element of Termination Charges relating to such Equipment which would otherwise be due to the Supplier shall be adjusted to reflect the amount of any consideration paid by the Customer (or its nominee, including any Successor Supplier) direct to the Supplier in respect of such Equipment.
- (d) The Supplier shall ensure that any material changes to its depreciation policies in respect of the Equipment (and shall use Commercially Reasonable Efforts to procure that any material changes to a Supplier subcontractor's depreciation policies in respect of the Equipment) are subject to the Customer 's agreement, such agreement not to be unreasonably withheld.

OPTION TO PURCHASE EQUIPMENT

- 1.7 Where the Customer exercises any option to purchase Equipment as described in Clause 10 of the Terms and Conditions (Assets and Third Party Contracts), the Supplier shall (subject to and in accordance with the provisions of such Clause) sell or transfer to the Customer or the Successor Supplier all Equipment the subject of the option so exercised.

NO OPTION TO PURCHASE EQUIPMENT FOR S18 FAST COMMODITY CLOUD (FAST-P) SERVICE

- 1.8 The Parties have agreed that upon the expiry of the Term, the Customer shall have no option to purchase the Equipment used to deliver the S18 FAST Commodity Cloud (FAST-P) Service. The Supplier shall retain ownership of all Assets for the S18 FAST Commodity Cloud (FAST-P) Service.

NO OPTION TO PURCHASE EQUIPMENT FOR S18 FAST-DB SERVICE

- 1.9 The Parties have agreed that upon the expiry of the Term, the Customer shall have no option to purchase the Equipment used to deliver the S18 FAST-DB Service and the Supplier shall retain ownership of all Assets for the delivery of the S18 FAST-DB Service.

NO OPTION TO PURCHASE EQUIPMENT FOR S18 FAST-DA SERVICE

- 1.10 The Parties have agreed that upon the expiry of the Term, the Customer shall have no option to purchase the Equipment used to deliver the S18 FAST-DA Service and the Supplier shall retain ownership of all Assets for the delivery of the S18 FAST-DA Service.



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SCHEDULE 5 | Intellectual Property Rights

Schedule 5 | Intellectual Property Rights

Part 1 – New Intellectual Property Rights created after the Effective Date in respect of new Fujitsu Project Services

For any new Intellectual Property Rights created after the Effective Date the Parties agree that Section F of the Terms and Conditions of this Agreement shall apply unless otherwise agreed in any order or agreement for an individual Fujitsu Project Services project.

Part 2 – Intellectual Property Rights used or created after the Effective Date in respect of Fujitsu Services.

This Part of Schedule 5 sets out the position agreed between the Parties in respect of the ownership and use of Intellectual Property Rights for the Expired Services and Additional services and now for the Fujitsu Services (and associated rights and obligations) already existing in the period prior to the Effective Date and created or modified for the Fujitsu Services after the Effective Date.

The following provisions (Clause 11 from the 2004 Agreement as incorporated into this Agreement sets out the agreed position in respect of Intellectual Property and the Fujitsu Services.

Where the same references:

- Other clauses schedule and defined terms it shall be interpreted by references to the references in the 2004 Agreement and or the 2020 Services Agreement; and
- PROTECTED SUPPLIER IPR It is a reference to the Protected Supplier IPR set out in Part 3 of this Schedule as updated and agreed between the Parties from time to time.

11 SOFTWARE AND PROPRIETARY RIGHTS

11.1 Intellectual Property Rights existing at the Effective Date and the Third Transfer Date

The Agreement shall not, and shall not be deemed to, assign to any Party any Intellectual Property Rights:

- (a) existing prior to or at the Effective Date;
- (b) created by either Party independent of the Agreement; or
- (c) in the case of the CCN300 Services, existing prior to the Third Transfer Date.

11.2 Validity of Rights

Nothing in this Agreement shall be deemed to constitute an acceptance by either Party that the particular Intellectual Property Rights claimed by the other Party are valid or enforceable and the Parties reserve their rights in Law to challenge the validity or enforceability of the same.

11.3 Residuals

Nothing in the Agreement shall prevent:

- (a) the Customer from using techniques, ideas and know-how gained during the Term in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Customer of any Intellectual Property Right of the Supplier or a Subcontractor; and
- (b) the Supplier or any Subcontractor from using techniques, ideas and know-how gained during the Term in the furtherance of its normal business (including for the benefit of its existing and future customers), to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Supplier or a Subcontractor of any Intellectual Property Right of the Customer, a Services Recipient or a Services Beneficiary.

11.4 Customer Software and Customer Material

- (a) The Customer shall retain all right, title and interest in and to all Customer Software and Customer Material.
- (b) The Customer hereby grants to the Supplier a fully paid-up, irrevocable, non-exclusive, non-transferable sub-licence during the Term and for the term of any Termination Assistance to use, operate, copy, Modify and adapt the Customer Software and the Customer Material in the Territory, only to the extent necessary for, and for the sole purpose of, fulfilling the Services Requirements and/or performing its other obligations under the Agreement (including Termination Assistance), with the right to grant non-transferable sub-licences thereunder to the Subcontractors only for such purposes.
- (c) The Customer shall make available to the Supplier the Customer Software and the Customer Material (as reasonably required by the Supplier to be able to fulfil its obligations in accordance with the Services Requirements) in such form and on such media as exists at the Effective Date and, in respect of Customer Software and Customer Material supplied after the Effective Date, in such form and on such media and at such time as may be agreed between the Parties.
- (d) The Customer shall either grant or procure the grant to the Supplier of a fully paid-up, irrevocable, non-exclusive, non-transferable sub-licence during the Term and for the term of any Termination Assistance to use, operate and copy the Capgemini Software Capgemini Material, Accenture Software and the Accenture Material and any other ICT Services Supplier Software or ICT Services Supplier Material (and in

respect of the relevant ICT Services Supplier providing such ICT Services Supplier Software and ICT Services Supplier Material, only to the extent that the Customer has followed the Change Control Procedure in introducing such ICT Services Supplier) in the Territory, only to the extent necessary for, and for the sole purpose of, fulfilling the Services Requirements and/or performing its other obligations under the Agreement (including Termination Assistance), with the right to grant non-transferable sub-licences thereunder to the Subcontractors only for such purposes. The Customer shall procure that the Capgemini Software, Capgemini Material, Accenture Software, Accenture Material or ICT Services Supplier Software or ICT Services Supplier Material licensed pursuant to Clause 11.4(d) are supplied to the Supplier in such form and on such media and at such time as may be agreed between the Parties and Capgemini, Accenture and any other ICT Services Supplier as relevant.

- (e) The Supplier shall cease any and all use of the Customer Software, the Customer Material, NIRS2 Software, NIRS2 Software New Modifications, Capgemini Software, Capgemini Material, Accenture Software, Accenture Material or ICT Services Supplier Software or ICT Services Supplier Material licensed pursuant to Clause 11.4(d) upon the later of (a) Termination of the Agreement; (b) the date upon which the Supplier ceases to require the same for the purposes of the provision of Termination Assistance; or (c) the date on which the same are no longer required in connection with the fulfilment of the Services Requirements.

11.5 NIRS2 Software and NIRS2 Software New Modifications

The Customer hereby:

- (a) [REDACTED]
- (b) [REDACTED]

11.5A FAST-DA Intellectual Property Rights

- (a) [REDACTED]
- (b) [REDACTED]
 - (i) [REDACTED]
 - (ii) [REDACTED]
 - (iii) [REDACTED]

11.6 Supplier Software and Supplier Material

- (a) The Supplier shall retain all right, title and interest in and to all Supplier Software and Supplier Material, including all Intellectual Property Rights therein.
- (b) Other than Supplier Software or Supplier Material which forms, or is to be provided as, part of the Supplier's Solution proposed at the Effective Date, the Supplier shall not introduce any Supplier Software or Supplier Material as part of, or in the provision of, the Supplier's Solution if the Supplier has reasonable grounds to believe that the Supplier Software or Supplier Material proposed to be used has an adverse impact on the Customer's costs of running its business or on the fulfilment of the Services Requirements, including in particular the Customer's security requirements (as set out in Schedule 4 (Security)) and its requirements in connection with its ability to exit from this Agreement (as set out in Schedule 2 (Business Requirements) and Schedule 9 (Exit Management)) and, if so, the Supplier shall obtain the prior written consent of the Customer to such introduction.
- (c) With the exception of items listed in Schedule 29 (Protected Supplier IPR) as at the Effective Date, the Supplier shall not designate any Supplier Software or Supplier Material to be Protected Supplier IPR without first obtaining the Customer's prior written consent through the Change Control Procedure. The Parties shall comply with the provisions of Schedule 29 (Protected Supplier IPR) and may further discuss and agree through the Change Control Procedure any additional terms applicable to the licensing or use of Protected Supplier IPR after Termination and shall record such additional terms in Schedule 29 (Protected Supplier IPR).
- (d) The Supplier hereby grants a fully paid-up, irrevocable, non-exclusive, non-transferable, licence to use, operate and copy the Supplier Software and Supplier Material (including Protected Supplier IPR) in the Territory during the Term to:
 - (i) the Customer, the Services Recipients and the Services Beneficiaries for the sole purpose and to the extent necessary to receive the benefit of those Services Requirements which such entity is entitled to receive under this Agreement during the Term;
 - (ii) the Customer to grant non-transferable sub-licences to Capgemini, Accenture and any other ICT Services Supplier, only to the extent necessary for, and for the sole purpose of, performing their respective obligations under their agreements with the Customer and for the Customer's (and any Service Recipients' and Service Beneficiaries') benefit (with the right to grant non-transferable sub-licences thereunder to subcontractors only for such purposes),

provided that:

(A) in relation to:

- 1) any ICT Services Suppliers other than Capgemini or Accenture; or
- 2) subcontractors to Capgemini, Accenture or any other ICT Services Suppliers,

the Customer gives written notice of such sub-licensees to the Supplier; and

(B) the Customer requires and procures that all such sub-licensees are signatories to confidentiality undertakings no less onerous than those set out in Clause 21.3(a) and comply with the applicable provisions of this Clause 11.6; and

(iii) (in respect only of Supplier Software and Supplier Material, and including Protected Supplier IPR only if the Parties expressly agree) the Customer for the purpose of using (or granting sub-licences to any other Contracting Authority to use) Supplier Software and Supplier Material which is either embedded within Work Product used by the Customer or required for the proper use of such Work Product used by the Customer (or such Contracting Authority), in each case solely for the use of such Work Product for its internal business purposes not connected with the Services Requirements, but not for commercial exploitation.

(e) With effect from any applicable Services Transfer Date (including such date where a Services Recipient or Services Beneficiary is removed from the Agreement), the Supplier hereby grants to the Customer a fully paid-up, irrevocable, (save as to Protected Supplier IPR, the term of which licence is set out in Clause 11.6(g)) perpetual, non-exclusive, non-transferable, licence to use, operate, copy, Modify and adapt the Supplier Software and Supplier Material (excluding, except in relation to Clause 11.6(e)(i)(A) or except where otherwise expressly specified, Protected Supplier IPR) in the Territory. The licence granted under this Clause 11.6(e):

(i) shall be granted only to the extent necessary and for the purposes of:

(A) the Customer, the Services Recipients and the Services Beneficiaries receiving (and any Successor Supplier(s) providing) services equivalent to those provided by Supplier to such

- entity prior to the applicable Services Transfer Date to fulfil the Services Requirements; or
- (B) the Customer using Supplier Software and Supplier Material which is either embedded within Work Product used by the Customer or required for the proper use of such Work Product used by the Customer, in each case solely for the use of such Work Product for its internal business purposes not connected with the Services Requirements (including the right to grant sub-licences to third party suppliers for such purposes), but not in each case for commercial exploitation; or
 - (C) (in respect only of Supplier Software and Supplier Material (but not Protected Supplier IPR unless the Parties otherwise agree) which is either embedded within Work Product or required for the proper use of such Work Product) the Customer granting a sub-licence to any Successor Supplier entitling such Successor Supplier to use such Software and Material in connection with any commercial exploitation by such Successor Supplier of any such Work Product for and on behalf of the Customer; and
- (ii) shall permit the Customer to grant sub-licences to any other Contracting Authority in relation to Supplier Software or Supplier Material, provided that such sub-licences shall:
- (A) apply only to Supplier Software or Supplier Material which is either embedded within Work Product used by or on behalf of such Contracting Authority or required for the proper use of such Work Product used by or on behalf of such Contracting Authority; and
 - (B) permit use by or on behalf of that Contracting Authority solely for the use of such Work Product or for its internal business purposes not connected with the Services Requirements, but not for commercial exploitation.
- (f) Prior to the Termination Date, the Parties shall use Commercially Reasonable Efforts to agree the terms pursuant to which the Supplier shall support the Supplier Software, Supplier Material and Protected Supplier IPR after Termination, provided that such terms shall be no more restrictive than those generally offered by the Supplier to other

customers at such time. The Supplier Exit Plan shall contain an up-to-date statement of the terms upon which such support will be offered.

- (g) In relation to Protected Supplier IPR and unless otherwise set out in Schedule 29 (Protected Supplier IPR) or as otherwise agreed, the licence granted in Clause 11.6(e)(i)(A) above shall expire twelve (12) months after the applicable Services Transfer Date. The licensing or use of Protected Supplier IPR shall also be subject to any other terms set out in Schedule 29 (Protected Supplier IPR).

11.7 Third Party Software and Third Party Material

- (a) The Supplier shall ensure that Third Party Software and Third Party Material acquisitions (including Modifications to any Third Party Software other than that which was already in use or subject to an existing agreement (even though not in use) as at the Effective Date and, in respect of Third Party Software and Third Party Material introduced pursuant to the ISA CCN, other than that which was already in use or subject to an existing agreement (even though not in use) as at the ISA CCN Effective Date) shall be licensed in the Supplier's name, where so requested by the Customer.
- (b) Prior to the introduction of such Third Party Software or Third Party Material (as referred to in Clause 11.7(a) above), the Supplier shall use Commercially Reasonable Efforts to obtain the right to grant to the Customer, the Services Recipients, the Services Beneficiaries, any Successor Supplier(s) (and their respective contractors) a perpetual, fully paid-up, non-exclusive licence to use, operate, copy, maintain, support and Modify such Third Party Software or Third Party Material in the Territory at the Termination of the Agreement for the sole purpose of the Customer, the Services Recipients and the Services Beneficiaries receiving services similar to those provided by the Supplier prior to the applicable Services Transfer Date to fulfil the Services Requirements.
- (c) If the Supplier is unable to obtain such right as referred to in Clause 11.7(b) above:
 - (i) if the Third Party Software or Third Party Materials are COTS and the licence fee and/or other fees charged by the third party for the use of such COTS does not **[REDACTED]** per annum, the Supplier shall be entitled forthwith to use such Third Party Software or Third Party Material without the prior approval of the Customer;
 - (ii) subject to Clause 11.7(c)(i) above, the Supplier shall notify the Customer in writing of its inability to obtain such a licence and shall provide the Customer with a copy of the

license and/or terms relating to such Third Party Software or Third Party Material whereupon the Customer shall, within a reasonable period, either confirm that such licence and/or terms is/are acceptable to it or, if such licence and/or terms is/are not acceptable to it, notify the Supplier and the following shall apply:

- (A) if the Third Party Software or Third Party Material is licensed or otherwise made available to the Supplier pursuant to the terms of an Assigned Contract and the Supplier wishes to renew the Assigned Contract, the Supplier shall be entitled to renew the Assigned Contract on the terms then offered by the relevant third party (but the Supplier shall, if the Customer so requires, permit the Customer to participate in any negotiations the Supplier may have with such third party relating to such renewal terms (provided that the Supplier shall in its sole and absolute discretion be entitled to renew the Assigned Contract prior to the expiry of the then existing term of such Assigned Contract));
- (B) subject to Clause 11.7(c)(ii)(A) above:
 - 1) the Customer shall be entitled to require the Supplier to ascertain the cost and viability of alternative software or material that can perform the requisite functions and to provide the Customer with a copy of the licence and/or terms relating to such alternative; and
 - 2) the Customer shall within a reasonable time either approve or reject the use of the proposed Third Party Software or Third Party Materials (and any alternatives as referred to in Clause 11.7(c)(i) above), provided that in the event that Customer rejects the use of such Third Party Software or Third Party Materials (and any such alternatives) the impact of such rejection shall be dealt with in accordance with the provisions of Schedule 12 (Change Control Procedure).

11.7A Not used.

11.8 Work Product

- (a) Subject to Clauses 11.1, 11.2 and 11.3 above, the Customer shall own all rights, title and interest (including Intellectual Property Rights) in and to all Work Product, together with all copies thereof, subject, in the case of Third Party Software or Third Party Material (and all Modifications to Third Party Software and Third Party Materials) included in such Work Product, to the terms of the relevant licences or contracts for such Third Party Software or Third Party Materials and subject, in the case of Supplier Software, Supplier Materials and Protected Supplier IPR, to the provisions of Clause 11.6 above, and in particular to the terms of the relevant licences for such Supplier Software, Supplier Materials and Protected Supplier IPR. In order to give effect to the ownership of such rights by the Customer as set out in this Clause 11.8(a), the Supplier hereby assigns to the Customer, by way of future assignment and in consideration of the mutual promises and covenants of the Parties under this Agreement, any and all such rights as may vest in it, and the Supplier shall ensure that, at all times and from time to time, all of its employees and subcontractors shall assign (either direct to the Customer or to the Supplier to enable the Supplier to comply with the terms hereof) any and all such rights as may vest in them.
- (b) The Customer hereby grants to the Supplier:
- (i) an irrevocable, fully paid-up, non-exclusive, non-transferable licence during the Term and for the term of any Termination Assistance to use, operate, copy, maintain, support and Modify the Work Product in the Territory, only to the extent necessary and for the sole purpose of fulfilling the Services Requirements and/or performing its other obligations under this Agreement, with the right to grant sub-licences thereunder to Subcontractors only for such purpose; and
 - (ii) a non-exclusive, perpetual, transferable, worldwide, (subject to the Supplier's continued compliance with the terms of Section 2.10 of Schedule 17 to this Agreement below) irrevocable, (subject to Section 2.10 of Schedule 17 to this Agreement) royalty-free, fully paid-up licence to use, copy, Modify, adapt, operate and prepare derivative works of the Work Product and other Intellectual Property Rights therein whether in its business or for internal purposes or otherwise (including the right to grant sub-licences to third parties for such purposes).

11.9 Non-Infringement, Conformation to Specification and Conformation of Ownership

- (a) The Supplier shall ensure that the Supplier Software, Supplier Material and Protected Supplier IPR (including any Supplier Software and Supplier Material embedded in any Work Product), and shall use Commercially Reasonable Efforts to ensure that all other products and their use by the Customer, Services Recipients, Services Beneficiaries and/or Successor Supplier(s) in the intended manner, shall not infringe any Intellectual Property Rights of any third party, provided that this Clause 11.9(a) shall not apply to the extent that any infringement is caused by:
 - (i) any Modifications other than those created by or on behalf of the Supplier;
 - (ii) the use of Supplier Software, Supplier Materials or Protected Supplier IPR in combination with any other Intellectual Property Rights:
 - (A) not provided by or on behalf of the Supplier under this Agreement;
 - (B) not approved (such approval not to be unreasonably withheld or delayed) by or on behalf of the Supplier provided that such approval shall (unless the Parties otherwise agree) only be required where the Supplier is responsible for the integration of any Supplier Software, Supplier Materials or Protected Supplier IPR with any other Software or Materials;
 - (iii) the use of Software or Materials outside the Territory; or
 - (iv) use of the Legacy Technical Infrastructure, Customer Software or Customer Material,

and provided further that this Clause 11.9(a) shall apply during the Term and thereafter in respect of the Customer, and during the Term (plus any period of Termination Assistance) but not thereafter in respect of Services Beneficiaries, Services Recipients, other Contracting Authorities and Successor Suppliers.

- (b) Subject to Clause 11.9(a) above, the Supplier confirms that:
 - (i) it owns or has the right to use or otherwise exploit, and shall, at all relevant times, own or have the right to use or otherwise exploit, the Equipment, Material, Software and all Intellectual Property Rights necessary to provide the Supplier's Solution; and

- (ii) it has, and shall at all relevant times have, the full right to grant the licences and provide any Assets, Work Product and/or Software to the Customer as set out in the Agreement,

provided that this Clause 11.9(b) shall not, and shall not be deemed to, apply to any of the Legacy Technical Infrastructure or to any Customer Software, Customer Material, Capgemini Software, Capgemini Material, Accenture Software, Accenture Material or ICT Services Supplier Software or ICT Services Supplier Material licensed pursuant to Clause 11.4(d).

11.10 Escrow

The Supplier shall keep the Source Code of all Software produced by it or on its behalf as part of the Work Product (including Modifications thereto) current, and shall, upon receipt of a written request, by and at the cost and expense of, the Customer, place the Source Code of all such Software (excluding Third Party Software and Software comprised in Protected Supplier IPR) in escrow with the National Computing Centre, Manchester, on the terms of its tripartite agreement or on such other terms as the Supplier and the Customer shall from time to time agree.

11.11 Cataloguing

Without prejudice to the provisions of Schedule 17 (Third Party Contracts and Licences), the Supplier shall as part of its obligations to manage this Agreement (in accordance with Schedule 2 (Business Requirements)) maintain a regularly updated inventory of all Third Party Software, all items referred to in Clause 11.10 above, all Supplier Software (including (but separately identified) all Protected Supplier IPR), and all other Supplier-owned Intellectual Property Rights which are used in the provision of the Supplier's Solution. The Supplier shall also maintain a regularly updated inventory of all items forming the Supplier Material (including all methodologies and processes therein) used in the provision of the Supplier's Solution. The initial inventories shall be produced by the Supplier within ten (10) weeks (or such other period as the Parties may agree) of the First Transfer Date and supplied to the Customer. The Supplier shall provide updated inventories to the Customer every six (6) months during the Term. The procedures set out in this Clause 11.11 shall apply equally to the ISA Implementation. The initial inventory in respect of IT Contracts Integration shall be produced by the Supplier and supplied to Supplier within three (3) months less fifteen (15) Working Days (or such other period as is agreed) of the Third Transfer Date.

11.12 Royalty Regime in respect of System Work Product

- (a) In respect of System Work Product which is used or supplied to a third party by the Supplier for the duration of the Intellectual Property Rights in question including after the Termination of this Agreement, to the extent that the Supplier proposes to provide System Work Product, or a work derived from System Work Product (as long as such derivative work has the same defining characteristics as those set out in the definition of System Work Product), to a third party in such a manner that its use by the third party, if the relevant acts were done by the said third party without the necessary consents and licences, would constitute an infringement of all or any of the rights in such System Work Product:
 - (i) prior to reaching any agreement with the third party in relation to the System Work Product (or making any use of the System Work Product on behalf of such third party), the Supplier shall notify the Customer of its intention to license the System Work Product to the third party (a “System Work Product Notification”); and
 - (ii) within thirty (30) Working Days of the Customer’s receipt of a System Work Product Notification, the Parties shall in good faith attempt to agree an appropriate royalty payment to the Customer from the Supplier and/or the third party. In order to enable the Parties to determine a suitable and reasonable royalty payment, the Supplier shall provide such information regarding the proposed use by the third party of the System Work Product as the Customer shall reasonably require. The Supplier shall, following the commencement of the use of the System Work Product for or on behalf of the third party, commence payment of the royalty payment in accordance with the agreed terms.

Part 3 - PROTECTED SUPPLIER IPR

12 GENERAL

12.1 The table in Section 2 below sets out an exhaustive list of the Protected Supplier IPR and any amendments to this table may only be made in accordance with Schedule 12 (Change Control Procedure) upon the agreement of the Customer.

12.2 The minimum rights of the Customer to use the Protected Supplier IPR both during the Term and after Termination are set out in Clause 11 of the Terms and Conditions. Optionally, the Customer and the Supplier may agree through the Change Control Procedure for a longer post-Termination licence to apply in respect of particular Protected Supplier IPR and, if so, shall set out the terms of such licence in the table below.

12.3 Each entry in the table set out below shall contain at least the following details:

- a) a name and description of the Intellectual Property Right;
- b) the exact scope of the Intellectual Property Rights claimed (for example copyright in a piece of Software, database right or patent rights); and
- c) a description of the manner in which the Protected Supplier IPR in question is used to fulfil the Services Requirements.

13 List of Protected Supplier IPR

[REDACTED]

Annex 1 | Form of Confidentiality Undertaking

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the “**Sub-licensee**”); and
- (2) [*insert name*] of [*insert address*] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [*insert name of Authority*] (the “**Authority**”) and the Supplier are party to a contract dated [*insert date*] (the “**Contract**”) for the provision by the Supplier of [*insert brief description of services*] to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or

- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;
- (c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above but not including any Information that:
 - (i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;
 - (ii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (iii) was independently developed without access to the Confidential Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;

- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word

processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or

in anticipation of the Sub-licence.

- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub- licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub- licensee of any of the provisions of this Agreement. Accordingly, the Sub- licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub- licensee to the Supplier for any breach of this Agreement shall be limited to **[REDACTED]**
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

if to be given to the Sub licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Sub-licensee*]

Signature:

Date:

Name:

Position:



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (November 2020)

SCHEDULE 6.3 | Projects and Ordering

Schedule 6.3 | Projects and Ordering

GENERAL

- 1.1 This Schedule sets out the main principles and processes for procuring Fujitsu Project Services or other Rate Based Services under this Agreement.
- 1.2 The Services that this Schedule allows the Parties to contract are:
- a) **Fujitsu Project Services** and other non-standard Rate Based Services which the Parties agree may be ordered on a case by case basis – as set out in this Schedule 6.3 – Part 1 ; and
 - b) **Service Catalogue Rate Based Services** – these are repeat items where the Parties have pre-agreed the nature of the Services that may be ordered based on an agree Service Catalogue. The basis of this arrangement is set out in Schedule 6.3 – Part 2 – Service Catalogue Services.

For the avoidance of doubt Fujitsu Services are not covered by this Schedule.

SCOPE OF THE FUJITSU PROJECT SERVICES

- 1.3 The activities and services that are in scope of the Fujitsu Project Services are services required by the Authority to support the commissioning, operation, migration, decommissioning and or any other exit related activity associated with the Fujitsu Services and or their replacement.
- 1.4 Where required and agreed between the Parties, the scope of the Fujitsu Project Services may comprise one or more of the following high level functional components, but not limited to:
- a) Process Management and Improvement
 - b) Project Management and Planning
 - c) Determination of IT Requirements / Discovery
 - d) Design and Architecture support
 - e) Security services
 - f) Installation / Build / Configuration work
 - g) Testing (in line with Schedule 6.2 Testing Procedures)
 - h) Systems Integration
 - i) Implementation
 - j) Acceptance into service and early life support

- k) Release Management
- l) Migration activity
- m) Knowledge Transfer / Documentation
- n) Decommissioning
- o) Procurement of hardware, software or other third party services ordered as Pass-Through Expenses.

1.5 Fujitsu Project Services may be requested and will be provided in accordance with the following commercial models:

- a) Project T&M
 - i. Work will be delivered on a time and materials basis based on an agreed rate card.
 - ii. The Supplier will create a proposal confirming scope and approach, any dependencies / risks, charges broken down by resource type and time, and likely total charges.
 - iii. May include resource augmentation assignments where the Supplier provides suitably qualified resources, and the Authority is responsible for the management and outcomes of the engagement.
 - iv. Authority will review and accept / reject the proposal in line with the Projects and Ordering process.
- b) Project Fixed Capacity or Fixed Outcome
 - i. Defined skills and associated throughput of work (e.g. “10 servers migrated per week”) – mutually agreed at the outset along with dependencies and assumptions.
 - ii. Profile of project work agreed over time following periodic reviews, with regular review cycles to check progress / backlog.
 - iii. If throughput is achieved, payments will be made in line with agreement;
 - iv. If throughput is not achieved, payments will be reduced IF the reasons for underperformance are that the Supplier has not delivered against its commitments. If the Customer fails to deliver against its commitments in such a way as to cause additional work or re-work for the Supplier, this will be funded on a time and materials basis. Review cycles allow the Parties to agree accountabilities for performance.

- v. Supplier will create a proposal confirming the Fujitsu Project Services Charges per cycle based on assumptions listed and an agreed maximum amount of such Fujitsu Project Services Charges at which point the arrangement will terminate or be extended by agreement between the Parties.
 - vi. Authority and the Supplier will both have the opportunity to review and accept / reject the proposal and suggested project in line with the Projects and Ordering process in this Schedule 6.3.
- c) Project Fixed Price
- i. Defined scope and outcomes for a defined price / milestone payments or for a capped and finite resource.
 - ii. Stated assumptions and dependencies on HMRC within the proposal. If dependencies not met, the Relief Event process will operate to re-align price / outcome. If dependencies met but outcome not achieved, no price increase.
 - iii. Supplier will create a proposal confirming charge per cycle/milestone based on assumptions listed and total charges.
 - iv. Authority will review and accept / reject the proposal in line with the Projects and Ordering process

SCHEDULE 6.3 - PART 1 – PROJECTS

PROJECTS - ORDERING PROCESS INTRODUCTION

- 1.6 If at any time during the term, the Authority wishes the Supplier to provide services as a Fujitsu Project Service, the Authority may request the Supplier to provide those services in accordance with this Schedule 6.3 (Projects and Ordering).
- 1.7 Charges for Projects will be paid in accordance with Schedule 7.1 (Charges and Invoicing) and may be agreed on a fixed price or time and materials basis, as agreed by the Parties in respect of each Project.
- 1.8 A Project involving development may be procured either on an agile basis (an “Agile Project”) or a waterfall basis (a “Waterfall Project”), as will be specified in respect of each proposed Project and agreed by the Parties. The process set out within this Schedule for the procurement of Projects is intended to apply both to Agile Projects and Waterfall Projects, with various differences where necessary, as highlighted in this Schedule, in order to accommodate the different project methodologies being utilised.
- 1.9 The following table sets out the basis for and process applicable to Fujitsu Project Services and or any other non-standard additional Services that the Parties may agree can be ordered on a case by case basis.

[REDACTED]

RATE BASED FUJITSU PROJECT SERVICES – ORDERING PROCESS

- 1.10 The Authority may require the Supplier to provide certain Rate Based Services, as anticipated by Schedule 5 (Charges).
- 1.11 If the Authority wishes to initiate Rate Based Services, then
- a) the Authority shall issue a “CR1” setting out the Rate Based Services required, along with other known details or parameters relating to such Rate Based Services. The CR1 will be on a template generated by the Authority, substantially in the form of a delivery change, small change, work request, or similar format as notified by the Authority from time to time; and
 - b) in reply to the CR1 the Supplier will provide a response setting out the proposed Charges (calculated in accordance with the provisions of Schedule 5 (Charges)) and such other RAID and information as is required to respond to the requirements (to the extent that the Supplier has the information required to do so) outlined in the CR1 (an “Impact” or “Impact Assessment”). The Impact will take the form of a Proposal Response (“PRT”) and any other accompanying documents as are required to express the Impact.
- 1.12 If the Supplier wishes to initiate Rate Based Services, then the Supplier will issue an Impact Assessment, which will take the form of a PRT, and may also include a narrative description of how the Rate Based Services will be delivered (including RAID and Charges), and any other accompanying documents as are required to express the Impact.
- 1.13 In either case, the Authority shall respond to the Impact within ten (10) days of receipt of the Impact, stating whether or not it wishes to proceed with the relevant Rate Based Services, or if it requires any further, reasonable information in order to make its decision.
- 1.14 If approved, the Authority’s Purchase Order shall constitute the Supplier’s authority to commence delivery of the Rate Based Services. In limited circumstances, for example where the Supplier’s Impact is not chargeable, the Supplier’s authority to commence delivery may be triggered by the Authority’s commercial written notification of such.

RATE BASED SERVICES - INVOICING

- 1.15 No Rate Based Services shall be invoiced until the Authority has issued a Purchase Order or other appropriate approval as described above. Once approval has been received, then invoicing for the Rate Based Services provided shall commence on the next invoice.

- 1.16 The Supplier shall invoice the Authority for all actual Man-days and other approved Charges validly undertaken against the Rate Based Services, and shall do so each month in arrears (i.e. the actual Man-days validly undertaken or Charges validly incurred during April will be invoiced no earlier than the end of that April invoice).
- 1.17 Invoiced Man-day charges shall not exceed [REDACTED] of the Supplier's Man-day charges approved by the Authority in the relevant purchase order, unless and to the extent that a subsequent Change is agreed.

Schedule 6.3 – Part 2– Service Catalogue Rate Based Services

- 1.18 The Parties may from time to time agree to deal with some services as Service Catalogue Rate Based Services.
- 1.19 They shall agree and document the basis for and process applicable to standard additional Services that the Parties may agree can be ordered from an agreed Service Catalogue or Service Catalogues agreed between the Parties that can be ordered on pre-agreed terms and for agreed Rate Based Charges.



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SCHEDULE 7.1 | Charges and Invoicing

Schedule 7.1 | Charges and Invoicing

This Schedule – Schedule 7.1 Charges and Invoices - sets out, defines, and describes the Fujitsu Services Charges payable by the Customer to the Supplier for the Fujitsu Services and Fujitsu Project services which are to be provided as a result of this Agreement.

[REDACTED]



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SCHEDULE 7.3 | Value for Money

Schedule 7.3 | Value for Money

[REDACTED]



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SCHEDULE 7.4 | Financial Distress

Schedule 7.4 | Financial Distress

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Accounting Reference Dates”	means the dates to which the Supplier prepares its audited financial statements;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Section 8 of this Schedule;
“Financial Distress Remediation Plan”	has the meaning given in Section 4.3 of this Schedule;
“Financial Rating Distress Event Criteria”	the distress criteria relating the Supplier’s credit rating as set out in Annex 7.4-1 of this Schedule;
“Financial Indicators”	means each of the financial indicators set out at Section 5.1 of this Schedule;
“Probability of Failure Percentage”	means the percentage figure specified as the “Probability of failure over the next 12 months” within Dunn and Bradstreet’s reports on the Supplier. This was previously known as the “Incidence of Failure” percentage; and
“Rating Agencies”	means the rating agencies listed in Annex 7.4-1 of this Schedule.

2. WARRANTIES AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Customer for the benefit of the Customer that, as at the Effective Date, the applicable credit ratings issued for the Supplier by each of the Rating Agencies does not meet the Financial Rating Distress Event Criteria.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if the applicable credit rating issued by any Rating Agency for the Supplier meets the applicable Financial Rating Distress Event Criteria (and in any event within five (5) Working Days of the occurrence of the Financial Rating Distress Event Criteria being met).
- 2.3 The Supplier shall:
- (a) regularly monitor the credit ratings of the Supplier with the Rating Agencies;

- (b) monitor and report on the Financial Indicators at least at the frequency set out at Section 5.1; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Section 3.1(a) below, and for the purposes of determining relief under Section 7.1 below, the credit rating of the Supplier shall be deemed to have met the applicable Financial Rating Distress Event Criteria if:
- (a) the credit rating given to the Supplier by a Rating Agency meets the Financial Rating Distress Event Criteria; or
 - (b) a Rating Agency that is specified as holding a credit rating for the Supplier ceases to hold a credit rating for the Supplier (except where that Rating Agency decides not to hold a credit rating for the Supplier for a reason other than financial difficulties of the Supplier (for example, were the Rating Agency ceases business or stops providing ratings for businesses within the Supplier's industry), provided that in such circumstances, the Parties shall agree a new Rating Agency as a replacement).
- 2.5 Each report submitted by the Supplier pursuant to Section 2.3(b) above shall:
- (a) contain a sufficient level of information to enable the Customer to verify the calculations that have been made in respect of the Financial Indicators;
 - (b) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - (c) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
 - (d) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Customer to easily analyse and assess the trends in financial performance.

3. FINANCIAL DISTRESS EVENTS

- 3.1 The following shall be "Financial Distress Events":

- (a) the credit rating of the Supplier meets the applicable Financial Rating Distress Event Criteria;
- (b) the Supplier issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;
- (d) the Supplier committing a material breach of a covenant to its lenders;
- (e) a Subcontractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; and
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier which, if successful, would have a material adverse effect on its financial standing and/or ability to perform the Services;
 - (ii) non-payment by the Supplier of any financial indebtedness;
 - (iii) any financial indebtedness of the Supplier becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect the Supplier; or
 - (v) the external auditor of the Supplier expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of the Supplier,

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement.

4. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Customer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in Sections 4.3 to 4.5 below.
- 4.2 In the event of a late or non-payment to a Subcontractor pursuant to Section 3.1(e), the Customer shall not exercise any of its rights or remedies under Section 4.3 below without first giving the Supplier ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Customer's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall:

- (a) at the request of the Customer, meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the services in accordance with this Agreement; and
- (b) where the Customer reasonably believes (taking into account the discussions and any representations made under Section 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) subject to Section **Error! Reference source not found.** below, prepare and submit to the Customer, a plan as to how it will address the Financial Distress Event and mitigate the effects of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement (a "Financial Distress Remediation Plan") as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Section 4.7 below, provide such information relating to the Supplier as the Customer may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Customer shall review the Financial Distress Remediation Plan and may provide comments on such plan to the Supplier. The Parties shall meet to discuss any comments that the Customer has and the Supplier shall use reasonable efforts to take such comments (provided they are commercially reasonable) into account and to update the Financial Distress Remediation Plan. Without prejudice to Section 6 of this Schedule, the Customer acknowledges that Financial Distress Events will have an effect on the wider corporate entity that the Supplier is part of and that the Supplier will have responsibilities to (without limitation) its corporate owners, officers and its other customers and third party relationships (including financial relationships) when responding to a Financial Distress Event; in light of this, the actions of the

Supplier following a Financial Distress Event (including creating the Financial Distress Remediation Plan and the actions thereunder) shall be at the Supplier's sole discretion.

4.5 The Supplier shall:

- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
 - (ii) provide a written report to the Customer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
- (b) where updates are made to the Financial Distress Remediation Plan in accordance with Section 4.5(a) above, submit an updated Financial Distress Remediation Plan to the Customer; and
- (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.6 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and the Parties may agree that the Supplier shall be relieved of its obligations under Sections 4.3 to 4.5 above (as applicable).

4.7 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Section **Error! Reference source not found.** is available when required and on request from the Customer and within reasonable timescales. Such measures may include:

- (a) agreeing in advance with the Customer, a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Customer;
- (b) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Customer (which may include making price sensitive information available to Customer nominated personnel through confidential arrangements, subject to their consent); and
- (c) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other

techniques to permit disclosure of the information without breaching a duty of confidentiality.

5. FINANCIAL INDICATORS

- 5.1 The Supplier will provide the Customer with a copy of its statutory annual accounts within five (5) Working Days of the statutory annual accounts being filed with Companies House, together with written calculations and commentary on the Financial Indicators including how and why they have changed since the previous year.

FINANCIAL INDICATOR	DESCRIPTION
Turnover	Turnover is the net sales generated by a business.
Net Profit Before Tax	Net Profit Before Tax is the amount by which revenue from sales exceeds costs in a business before the company has to pay corporation tax.
Shareholders' Funds	Shareholders' Funds is the balance sheet value of the shareholders' interest in a company. For company (as opposed to group) accounts it is simply all assets less all liabilities. For consolidated group accounts the value of minority interests should also be excluded.
Gearing	Gearing is a ratio used to measure the financial leverage employed by a firm. Gearing represents the proportion of funding by lenders as compared to the funding by shareholders. It denotes the level of a firm's debt as a percentage of its equity capital. It is a fundamental analysis ratio of a firm's level of long-term debt as compared to its equity capital.
Current Ratio	The Current Ratio is a liquidity ratio that measures whether a firm has sufficient resources to meet its short-term obligations. It compares a firm's current assets to its current liabilities, and is expressed as follows: Current Ratio = Current Assets/Current Liabilities

- 5.2 If the statutory accounts have not been filed at Companies House within nine (9) months of the Supplier's Accounting Reference Date the Supplier shall notify the Customer and provide an explanation as to why the Supplier has not filled its statutory annual accounts.

6. TERMINATION RIGHTS

The Customer shall be entitled to terminate this Agreement under Clause 33) (Termination by the Authority) if:

- (a) the Supplier fails to notify the Customer of a Financial Distress Event in accordance with Section 2.3(c);
- (b) the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) provided by the Supplier is unacceptable to the Customer (acting reasonably) and the Parties have been unable to agree a mutually acceptable Financial Distress Remediation Plan; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Section 4.5(c) above.

7. PRIMACY OF CREDIT RATINGS

7.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under Section 2 above, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings for the Supplier does not meet the relevant Financial Rating Distress Event Criteria, then:

- (a) the Supplier shall be relieved automatically of its obligations under Sections 4.3 to 4.5 above; and
- (b) the Customer shall not be entitled to require the Supplier to provide financial information in accordance with Section **Error! Reference source not found.** above.

8. BOARD CONFIRMATION

8.1 Subject to Section 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Customer in the form set out at Annex 7.4-2 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

- 8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in Section 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Sections 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Customer (and where the Supplier is deemed to be a strategic supplier of the Customer, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

Annex 7.4-1**Rating Agencies and Credit Rating Distress Criteria**

[REDACTED]

Annex 7.4-2**Board Confirmation****Supplier Name:****Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at Section 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date



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SCHEDULE 7.5 | Financial Reports and Audit Rights

Schedule 7.5 | Financial Reports and Audit Rights

PART A | Financial Reports AND FINANCIAL MODEL

FINANCIAL REPORTS

1 Scope

- 1.1 This Schedule sets out the range of Reports and Customer Reports that the Supplier and the Customer shall provide during the Term to enable the Parties to manage the Agreement effectively. This Schedule does not document each and every Report and Customer Report required but instead sets a framework for reporting which shall:
- (a) deliver accurate and relevant information in respect of the performance of the Fujitsu Services and the Fujitsu Project Services including their development and any transition or exit;
 - (b) support sound governance of the Agreement and the principles of partnership described in Schedule 8.1 (**Governance**);
 - (c) support and evidence the agreed commercial arrangements in respect of assets, finance, and resource usage as those commercial arrangements are made;
 - (d) support the planning processes for future business delivery; and
 - (e) provide for ongoing development of reporting requirements.
- 1.2 This Schedule also sets out the Customer Reports that the Customer shall provide during the Term to enable the Supplier itself to report and also to manage the Agreement and the Fujitsu Services effectively.
- 1.3 Annex 7.5-1 sets out the main Reports and Customer Reports required by the Customer and Supplier (respectively).
- 1.4 Nothing in this Schedule shall constrain the Customer from reasonably requesting data and information relating to the provision of the Services from the Supplier on an ad hoc basis and in accordance with the Agreement. The Parties agree that, for the purposes of determining whether requests from the Customer for such data or information are reasonable, a total effort on producing ad hoc data and/or information in excess of three (3) Man-days in any calendar month in addition to providing the other Reports required under this Schedule shall be considered unreasonable.
- 1.5 Nothing in this Schedule shall constrain the Supplier from reasonably requesting data and information relating to the provision of the Services from the Customer on an ad hoc basis and in accordance with the Agreement.
- 1.6 As methods of managing and optimising the effectiveness and value of information systems evolve during the Term, the Parties shall work with each other, within the

terms of normal business development, to investigate potential benefits to them and the Services of adopting new technologies and/or methodologies which deliver improved reporting.

2 REPORTS AND CUSTOMER REPORTS

2.1 Annex 7.5-1 contains the main Reports.

2.2 Further reporting will be expected of the Supplier as part of the provision of the Services and their performance. In order to permit such reporting the Customer will provide to the Supplier the Customer Reports set out in Annex 7.5-3 and also provide such information as is reasonably requested by the Supplier where the Supplier's ability to measure, monitor or report in accordance with its obligations under this Agreement require an act or assistance by the Customer, a Services Recipient or a Third Party Supplier, the Supplier shall be relieved from its obligations to measure, monitor or report to the extent any failure in this respect has been caused by a failure of the Customer, the applicable Services Recipient or the applicable Third Party Supplier to undertake such act or provide such assistance within a reasonable timeframe following a reasonable request by the Supplier to undertake such act or provide such assistance. Such request for additional information does not affect the Customer's obligation to provide Customer Reports

2.3 In order to effectively manage some aspects of the Services, in addition to the Customer Reports set out in Annex 7.5-3, the Customer shall provide regular reports and updates on the following matters as reasonably requested by the Supplier:

- (a) The activities and progress of the Customer's SOTF programme in exiting the Fujitsu Services to enable the Supplier to perform the Fujitsu Services in accordance with this Agreement;
- (b) The progress and timing more generally of the Customer's various activities to modernise and replace some or all of the functionality performed by the Fujitsu Services;
- (c) Changes that may impact the Flexible Collar;
- (d) The Customer's changing business needs in respect of the matters supported by the Fujitsu Services and Fujitsu Project Services; and
- (e) Anticipated changes in consumption of the Fujitsu Services as a result of the Customer's plans and operations including reporting of anticipated changes resulting from calendar timing and business change.

2.4 Reports and Customer Reports shall be supplied via electronic and/or hardcopy media and in such format as required by the other Party.

2.5 Minor changes to the content and format of Reports requested by the Customer shall be carried out by the Supplier at no cost to the Customer. New reporting requirements or substantial changes to existing Reports and Customer Reports shall be agreed pursuant to the Change Control Procedure.

3 DELIVERY

- 3.1 Although different timings may be agreed between the Parties, the Supplier shall comply with the Customer's reporting requirements, as follows:
- (a) for daily Reports, by noon on the following Working Day;
 - (b) for weekly Reports, by noon on the first Working Day of the following week of the scheduled interval;
 - (c) for monthly Reports except as otherwise stated in Annex 7.5-1, by close of business on the fourth (4th) Working Day following the end of the month;
 - (d) for quarterly Reports, by close of business on the eighth (8th) Working Day following the end of the Quarter;
 - (e) for annual Reports, by close of business on the seventeenth (17th) Working Day following the end of the applicable Contract Year; and
 - (f) financial accounting and reporting data, except as otherwise specified, as reasonably required by the Customer.

4 RAW DATA

- 4.1 The Supplier shall retain any raw data it has access to which is underpinning any Report for the relevant period to comply with the provisions of this Schedule in respect of Audit Access, or for such other period as may be reasonably required by the Customer in order to allow the Customer to verify the relevant Report. Where necessary the Customer shall also retain the raw data underpinning any Customer Report for such other period as may be reasonably required by the Customer in order to allow the Customer to verify the relevant Report.

5 DISTRIBUTION OF REPORTS

- 5.1 Multiple hard copies of Reports may be required for delivery to appropriate Customer recipients.
- 5.2 The Customer reserves the right to determine the distribution lists for all Reports required under the Agreement.
- 5.3 The Supplier shall distribute Reports electronically as specified by the Customer.

6 PERFORMANCE MONITORING AND REPORTING

- 6.1 Within ten (10) Working Days of the end of each Measurement Period, the Supplier shall provide a Report to the Customer which summarises the performance by the Supplier against each of the Service Levels (the "**Performance Monitoring Report**")
- 6.2 Subject to the Customer providing Customer Reports reasonably required for this purpose, the Supplier shall carry out performance monitoring and review of

performance by the Supplier against each of the Service Levels. The Supplier shall show the results of such monitoring and review within the Performance Monitoring Report. The method of performance reporting shall be in such format (and using such tools) as the Customer may reasonably request from time to time and or as otherwise agreed between the Parties.

- 6.3 Where the Parties have agreed that a Service Level cannot be measured using the tools currently available to the Supplier, the Supplier shall use Commercially Reasonable Efforts to provide the Performance Monitoring Report, or any other reports agreed between the Parties with respect to the monitoring and review of such Service Levels.
- 6.4 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, unless otherwise agreed at an operational level by the Parties, as a minimum, the following information:

Information in respect of the Measurement Period just ended

- (a) for each Service Level, the actual performance achieved over the Measurement Period which has just ended, and that achieved over the previous three (3) Measurement Periods;
- (b) a summary of all Service Level Failures that occurred during the Measurement Period;
- (c) where applicable, the Failure Severity Level of each Service Level Failure which occurred during the Measurement Period;
- (d) for any Service Level Failures relating to system Availability occurring during the Measurement Period, the root cause of the relevant Service Level Failure and the action being taken to reduce the likelihood of recurrence. Where a root cause cannot immediately be established an interim report is to be provided and updated subsequently when this is possible;
- (e) for any repeat Service Level Failures, actions taken or recommendations of action needed from the Customer to resolve the underlying cause and prevent recurrence;
- (f) the Service Credits to be applied, indicating the Service Level Failures to which the Service Credits relate;
- (g) the conduct and performance of any agreed periodic tests that have occurred;
- (h) such other details the Parties may reasonably agree from time to time;

Information in respect of previous Measurement Periods

- (i) a rolling total of the number of Service Level Failures that have occurred over the past six (6) Measurement Periods or, where six (6) Measurement Periods have not yet passed, such rolling number of Measurement Periods as applicable, including where relevant any Repeat Failure Counts;

- (j) the amount of Service Credits that have been incurred by the Supplier over the past six (6) Measurement Periods or, where six (6) Measurement Periods have not yet passed, such rolling number of Measurement Periods as applicable;
- (k) the conduct and performance of any agreed periodic tests that have occurred in such Measurement Period; and

Information in respect of the next Quarter

- (l) any scheduled service platform downtime for permitted maintenance and updates that have been agreed between the Parties for the next Quarter.

6.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) in accordance with Schedule 8 (Governance) to review the Performance Monitoring Reports. These meetings shall (unless otherwise agreed):

- (a) take place within fifteen (15) Working Days of the end of each Measurement Period;
- (b) take place at such location and time (within Normal Working Hours) as the Customer shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Supplier representative and the Customer representative.

6.6 The Supplier acknowledges and agrees that the Customer may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular Service Level. In the event of any dispute or difference between the Supplier's assessment and the Customer's assessment in respect of a Service Level, the Supplier's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Customer shall be entitled to subsequently escalate any remaining dispute or difference in accordance with the Escalation Process.

6.7 Both Parties shall be entitled to raise any reasonable additional questions and/or request any further reasonable information from the other Party regarding any Service Level Failure.

6.8 In addition to the requirements in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Supplier.

6.9 The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Customer are available to the Customer on-line and are capable of being printed.

ANNEX 7.5-1
PART A – SUPPLIER REPORTS IN RESPECT OF
FUJITSU SERVICES & (where relevant) FUJITSU PROJECT SERVICES

[REDACTED]

In addition, the following reports will also be provided:

[REDACTED]

PART B | Audit Rights**AUDIT RIGHTS****1 INTRODUCTION**

- 1.1 This part Part B of Schedule 7.5 describes the record keeping requirements and audit access rights of the Customer in relation to the Supplier (and all Subcontractors). It also details the statutory requirements of the NAO.
- 1.2 Wherever in this Schedule, the Customer is specified as having a right, the Customer may choose to exercise such right through a Customer Audit Representative, in which event the Customer shall procure that such Customer Audit Representative shall sign a confidentiality agreement in a form agreed by the Customer and the Supplier (each acting reasonably).

2 OVERVIEW

- 2.1 The IAO is responsible for providing independent assurance across all areas of the Customer's business. An annual risk-based programme is agreed with the Customer's Audit Committee, to provide the Customer's Chief Executive and the Board with an overall opinion of its exposure to risk, governance and the effectiveness of its systems of internal control.
- 2.2 The Departmental IT Security Officer sets the security policy and standards for the Customer, and provides an opinion to the Customer's Chief Executive and the Board on their exposure to security risk. The Customer's security requirements are set out in Schedule 2.4 (**Security Management**).
- 2.3 There may also be occasional instances where an audit team is drawn from other specialist areas within the Customer where this is merited by the nature of the subject of the review.
- 2.4 The NAO has a statutory right of access under the National Audit Act 1983 (and other relevant legislation as detailed in this Schedule) to examine and certify the accounts of the Customer and to examine the economy, efficiency and effectiveness with which the Customer has used its resources. The Comptroller and Auditor General also has responsibilities under Section 2 of the Exchequer and Audit Act 1921 which require access to information.

3 MAINTENANCE AND RETENTION OF RECORDS

- 3.1 The Supplier shall keep (in an orderly, auditable and assessable manner) full and accurate Records, in a form agreed by the Parties, until the later of:
- (a) seven (7) years after the date of creation of the relevant Record; and

- (b) the date that all pending matters relating to the subject-matter of each Record (including disputes) are closed,

unless an alternative retention period has been agreed with the Customer.
- 3.2 The Supplier shall ensure that all Subcontractors (and any other representatives engaged by it) keep full and accurate Records relevant to the provision of products and services provided by such Subcontractors pursuant to this Agreement. The retention period for such Records shall be the same as that described in Section 9.1 above.
- 3.3 Without limitation to Section 9.1 above, the Supplier shall maintain complete, accurate and valid records of, and supporting documentation for, invoices submitted to the Customer and the payments made by the Customer under this Agreement. Such other accounting principles shall be implemented in accordance with this Agreement where the same are applied by the Supplier to its customers generally. Where the Customer requires the Supplier to adopt a specific accounting principle that the Supplier does not apply (and is not required by Law to apply) with respect to its other customers, such requirement shall be addressed in accordance with the Change Control Procedure.
- 3.4 Before destroying or otherwise disposing of any Records, the Supplier shall:
 - (a) provide the Customer with sixty (60) days' prior written notice of the intent to destroy or dispose of such Records;
 - (b) offer the Customer the opportunity to recover such information and allow the Customer to take any of the following options:
 - (i) to require the Supplier to retain such Records for longer than the previously agreed retention period;
 - (ii) to request the Supplier to deliver such Records to the Customer; and
 - (iii) to allow the Supplier to destroy or dispose of such Records; and
 - (c) notify the Customer of the costs of the options described above.
- 3.5 If the Customer selects any of options then the Customer shall pay the costs (if any) of the option selected provided that the Supplier shall not charge the Customer its costs in the event that the Customer selects the option to allow the Supplier to destroy or dispose of such Records .

4 AUDIT ACCESS RIGHTS

- 4.1 The Supplier shall, and subject to Section 10.5 below shall ensure that a relevant Subcontractor shall, grant the Customer access at all reasonable times, subject to the provisions of Sections 10.8 and 10.9 below, to any Facility or part of a Facility (including the Supplier's Facilities and/or any facilities of a relevant Subcontractor) at which the

Supplier or any relevant Subcontractor is providing the Services, and shall grant to the Customer reasonable access to the Supplier Personnel and to Records (including any personnel or records of a relevant Subcontractor) relating to the Fujitsu Services and (including Records relating to complaints received from HMRC Customers), and the right to copy such Records for the purpose of performing audits of the Supplier and any relevant Subcontractor in order to:

- (a) conduct the Customer's internal and statutory audits, including preparing the Customer's annual and interim reports;
- (b) verify the accuracy of the calculation of the Service Charges and/or any other amounts payable by the Customer under the Agreement and invoices;
- (c) verify the accuracy of Pass-Through Expenses payable by the Customer;
- (d) verify the Supplier's and its relevant Subcontractors' provision of the Fujitsu Services and compliance with the terms of the Agreement, to the extent applicable to the Fujitsu Services and the relevant Service Charges, by performing audits of:
 - (i) practices and procedures;
 - (ii) systems;
 - (iii) general controls and security practices and procedures, including business continuity and disaster recovery plans;
 - (iv) disaster recovery and back-up procedures;
 - (v) the use of any Equipment, Customer Software or Customer Third Party Software used by or on behalf of the Supplier or any relevant Subcontractor;
 - (vi) Service Levels and supporting information and calculations, including the measurement and monitoring tools and procedures specified in Schedule 2.2 (Performance Levels); and
 - (vii) such other audits as may be necessary to enable the Customer to fulfil, or to confirm that the Supplier is fulfilling, the requirements of all applicable Laws;
- (e) inspect any Customer Assets in the Supplier's or any relevant Subcontractors' possession or control (including Customer Data, HMRC Customer Data, or any equipment or Customer Accommodation) for the purposes of ensuring that the Customer Assets are protected in accordance with Schedule 2.4(**Security Management**);

- (f) verify the integrity, confidentiality and security of Customer Data and/or HMRC Customer Data, including inspecting the Technical Infrastructure (or any parts thereof) and any other systems that Process, store, support and transmit Customer Data and/or HMRC Customer Data;
 - (g) identify suspected fraud or material accounting mistakes, provided that the Customer will be under no obligation to inform the Supplier of the objective of such an audit where to do so is reasonably considered by the Customer to be prejudicial to the purpose of such audit; and
 - (h) Facilitate the operation of the open book procedures.
- 4.2 All audits carried out pursuant to this Schedule shall be conducted in a reasonable and professional manner and with minimum disruption to the Supplier's ability to perform its obligations under this Agreement or its obligations in respect of any of its other customers (insofar as may be possible for such audit work).
- 4.3 Where the Customer has informed the Supplier in advance of the purpose and scope of an audit to be carried out by the Customer pursuant to this Schedule, the Supplier shall, and shall procure that, where applicable, the relevant Subcontractors shall, notify the Customer in writing, in advance of any matter or course of action of which it or they are aware and which, in its or their reasonable opinion, would be likely to affect the manner in which such audit is carried out and/or the impact that such audit would have on the Supplier's ability to perform its obligations under this Agreement and/or any relevant Subcontractors ability to perform its obligations under any Subcontract or its obligations in respect of any of its other customers.
- 4.4 Any loss or damage caused to the Supplier and/or the relevant Subcontractors by the Customer or the NAO exercising any of its rights under this Schedule shall be treated as a deemed Relief Event and the Supplier shall be entitled to recover Relief Event Compensation in accordance with this Agreement, provided that the Supplier and/or the relevant Subcontractors have complied with the provisions of Section 10.3 above. The Customer shall, and shall procure that Customer Audit Representatives shall, comply with such security and related policies and procedures that apply to any of the Supplier's Facilities to which the Supplier has granted access for the purpose of an audit under this Schedule as the Supplier may have notified to the Customer and/or Customer Audit Representatives in advance.
- 4.5 All references in this Section 10 to audits by the Customer or the Customer Audit Representative of a Subcontractor shall be subject to the following provisions:
 - (a) subject to Section 10.5(c) below, in respect of all Subcontractors with whom the Supplier has entered into a subcontract agreement prior to the Effective Date, the Customer shall benefit from such rights of audit that the Supplier has been able to procure from the Subcontractors on behalf of Customer as at the Effective Date.

The Parties acknowledge that such rights of audit may not be similar to or extend to the rights of audit as are granted, allowed and / or accepted by the Supplier under this Schedule;

- (b) subject to Section 10.5(c) below, in respect of each new Subcontractor with whom the Supplier enters into a subcontract agreement from the Effective Date, the Supplier shall procure that such Subcontractor grants and allows, where appropriate, similar rights of access and accepts, where appropriate, similar obligations to provide information as are granted, allowed and / or accepted by the Supplier under this Schedule; and
- (c) in respect of all Subcontractors (and whether existing prior to or after the Effective Date), the rights of audit granted to the Customer under this Schedule shall not extend to any Subcontractor that meets any one of the following tests:
 - (i) whose service provision does not form a material part of the Services;
 - (ii) whose service provision will be provided pursuant to a framework agreement between the Supplier (or any other Supplier Group Company) and the relevant Subcontractor (or any Affiliate of such Subcontractor);
 - (iii) whose service provision constitutes commercially available, off the shelf information technology or business process services; or
 - (iv) that does not involve employees of such Subcontractor having access to Customer Confidential Information, the IT Estate or Customer Data.

4.6 The Supplier shall provide all reasonable assistance to the Customer and the NAO at all times during the Term (and for the period described below) to enable the Customer and the NAO to exercise their rights in accordance with this Schedule. For the avoidance of doubt, the Supplier shall, and shall procure that any relevant Subcontractor shall, co-operate with Customer Audit Representatives and/or representatives of the NAO and provide such reasonable assistance as they require (including, where appropriate, installing and operating audit software in accordance with the agreed procedures) in carrying out the audits. The Customer and the NAO shall be entitled to discuss any matter arising pursuant to the exercise of their rights under this Schedule with any relevant Supplier Personnel as the Customer or the NAO may reasonably require.

4.7 The Customer will provide at least ten (10) Working Days' notice of any audit of a routine nature that it intends to carry out.

4.8 The Supplier shall grant immediate access for investigative audits or security testing in the following circumstances:

- (a) such audit is reasonably required by the Customer on the basis that the Customer has reasonable grounds to suspect fraud or other impropriety which is similar in

nature to fraud by the Supplier, any of the Subcontractors or any of the Supplier Personnel;

- (b) the Customer has reasonable grounds to suspect that the Supplier may be in material breach of its obligations under this Agreement;
- (c) the Customer has reasonable grounds to suspect that a significant security breach has occurred;
- (d) the Customer may carry out occasional unannounced security testing to establish compliance with Schedule 2.4 (**Security Management**); or
- (e) other circumstances have arisen, or are believed to have arisen, which would give the Customer the right to terminate the Agreement for Material Default or Prohibited Act.

4.9 In the event of an investigation into suspected fraudulent activity or other impropriety by the Supplier, any of the Subcontractors or any of the Supplier Personnel in connection with the Agreement, the Customer reserves for itself and its authorised agents the right of immediate and reasonable access to the Supplier's Records and/or any Supplier Personnel, including any records and/or personnel of any relevant Subcontractor. The Supplier agrees to render all necessary and reasonable assistance to the conduct of such investigation at all times during the Term or at any time thereafter.

4.10 The Supplier shall further grant immediate access to HMRC Customer Data and Customer Data where such access is reasonably required by the Customer on the basis that the Customer has reasonable grounds to suspect fraud or other impropriety which is similar in nature to fraud by any Customer personnel or any third party to whom the above does not apply, provided that this right of access shall be limited as described below.

4.11 In the event of an investigation, in accordance with the above, into suspected fraudulent activity or other impropriety which is similar in nature to fraud by any Customer personnel or any third party in connection with the Agreement, the Customer reserves for itself and its authorised agents the right of immediate and reasonable access to such HMRC Customer Data and Customer Data as would be relevant to the investigation of such fraud. Such investigation shall not extend to the wider rights of audit set out in this Schedule. The Supplier agrees to render all necessary and reasonable assistance to the conduct of such investigation at all times during the Term or at any time thereafter.

5 SUPPLIER AUDIT AND LIAISON

5.1 The Supplier shall conduct internal reviews and audits of, or pertaining to, its provision of the Fujitsu Services in a manner consistent with Good Industry Practice.

5.2 The Supplier shall:

- (a) inform the Customer of the identities of its internal representatives that have responsibility for audit and security (or that have equivalent review capabilities);
- (b) provide reasonable details to the Customer of the Supplier's own audit and security programmes relevant to the provision of the Services; and
- (c) ensure that its representatives liaise with the Customer regarding the potential for joint working, where practicable, and the development of the necessary procedures to support this aim,

in accordance with any agreed audit memorandum of understanding applicable to the Fujitsu Services (the "**Audit Memorandum of Understanding**").

5.3 The Supplier shall notify the Customer as soon as practicable where any audit is carried out by it or on its behalf which directly relates to any aspect of service provision pertinent to this Agreement.

5.4 In accordance with the Audit Memorandum of Understanding, the Supplier shall promptly make available to the Customer the results of any review or audit conducted by itself (excluding audits conducted by the Supplier Group's group audit function) or by the Subcontractors relating to the Fujitsu Services and any finding or report concerning actual or suspected errors with respect to the Fujitsu Services and/or any amounts charged to the Customer hereunder.

6 COMPTROLLER AND AUDITOR GENERAL AND THE NAO

6.1 For the purposes of:

- (a) the examination and certification of the accounts of the Customer, which includes, for the avoidance of doubt, purposes associated with Section 2 of the Exchequer and Audit Act 1921, the National Audit Act 1983, and the Government Resources and Accounts Act 2000 and any other similar legislation that may come into force; and/or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources,

the Comptroller and Auditor General and/or his representatives ("**C&AG**") shall have the right to examine the Supplier's Records and all such documents and other information owned, maintained or held by, or otherwise in the control of the Supplier as the C&AG may reasonably require or reasonably consider necessary. The Supplier shall provide access (and shall procure that any person acting on the Supplier's behalf who has such Supplier's Records, documents and/or other information shall also provide access) to such Supplier's Records, documents and/or other information for C&AG for such purposes. Further, the Supplier shall furnish to the C&AG such oral or written explanations as he reasonably requires for such purposes on the same terms that the

Supplier is required to provide access and assistance to the Customer as set out in this Schedule. The Supplier will not be liable for the C&AG's own costs of such examination and clarification.

- 6.2 For the avoidance of doubt, it is hereby declared that Section 12.1 above does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier by the C&AG under Section 6(3)(d) of the National Audit Act 1983.

7 PAYMENT FOR AUDIT ACTIVITY

- 7.1 Except where specifically provided in this Schedule, neither the Supplier, Subcontractors nor other representatives of the Supplier shall be entitled to reimbursement by the Customer or the NAO for any costs or expenses incurred as a result of compliance with the Supplier's obligations hereunder.
- 7.2 During the period described in Section 15 below, the Supplier shall provide assistance with audits conducted by the Customer pursuant to this Schedule (excluding audits conducted pursuant to Sections 10.8 (a), 10.8 (b), 10.8(c), 10.8(e) or 10.9 above) which shall be paid for as Rate Based Services.
- 7.3 Each Contract Year the Supplier shall provide within the Service Charges up to one hundred and thirteen (113) Man-days of assistance (the "Baked-in Audit Man-days") with the following types of audit.
- 7.4 The Supplier shall not bear the Customer's or the NAO's own costs of undertaking activities contemplated or required pursuant to this Schedule.
- 7.5 The Supplier shall be paid any reasonable expenses incurred in giving any such reasonable assistance for the circumstances set out in Sections 10.8 (a), 10.8 (b), 10.8(c), 10.8(e) or 10.9 above only where the fraud, impropriety of a similar nature to fraud, material breach or security breach is not by any of the Supplier Personnel, unless that fraud or breach should reasonably have been expected to have been prevented by the Supplier or a Subcontractor. The Supplier shall further be paid for the Man-days of assistance with audits conducted by the Customer pursuant to Section 10.9 above as Rate Based Services where the fraud or impropriety which is similar in nature to fraud is not by any of the Supplier Personnel, unless that fraud or impropriety which is similar in nature to fraud should reasonably have been expected to have been prevented by the Supplier or a Subcontractor.

8 AUDIT OF PASS-THROUGH EXPENSES

- 8.1 The Supplier shall ensure that any arrangements that it enters into with third parties, and which are to be paid by the Customer as Pass-Through Expenses, provide the right for the Customer to audit the charges and invoicing in respect of such Pass-Through Expenses.

9 DURATION OF RIGHTS

- 9.1 Subject to Section 4.11, the Customer and the NAO may exercise any of their rights set out in this Schedule for a period of twenty-four (24) months following the end of the Term.

10 AUDIT REPORTING AND FOLLOW-UP

- 10.1 Following an audit conducted pursuant to this Schedule, the Customer will conduct review meetings with the Supplier to determine what, if any, actions will be taken in response to any issues arising out of such audit that pertain to the Supplier.
- 10.2 The Supplier and the Customer (together with the NAO) shall develop, agree and thereafter follow procedures for the sharing of reports for audits carried out pursuant to the Audit Memorandum of Understanding.
- 10.3 The Supplier shall provide updates to the Customer on the implementation of any actions from undisputed recommendations made in audit reports and any recommendations made in audit reports that are disputed by the Supplier but resolved in the Customer's favour under the Escalation Process, in each case in line with the procedures in the Audit Memorandum of Understanding.
- 10.4 If any audit reveals any error or incorrect charging in any Supplier invoice, an appropriate correcting payment or credit shall be promptly made by the Supplier in accordance with Schedule 7 (Financial Matters).

11 ESCALATION PROCESS

- 11.1 In the event that an issue arising out of an audit conducted pursuant to this Schedule cannot be resolved at an operational level, the resolution of that issue will be progressed under the Escalation Process.



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (November 2020)

SCHEDULE 7.6 | Anticipated Savings

Schedule 7.6 | Anticipated Savings

[Redacted]



HM Revenue
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HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (November 2020)

SCHEDULE 8.1 | Governance

Schedule 8.1 | Governance

1 INTRODUCTION

1.1 This Schedule sets out:

- (a) the fundamental principles governing the behaviours of the Parties needed to enable the Parties to achieve the Governance Principles; and
- (b) the framework for the management and governance of this Agreement.

2 GOVERNANCE PRINCIPLES

2.1 This Section sets out the principles which will underpin the operation and management of this Agreement, and which will be used to assist in the resolution of any problems and issues that arise (the “**Governance Principles**”).

2.2 In working together to resolve problems, issues and risks, the Parties will recognise and respect each other’s primary business objectives which underpin their relationship.

2.3 In the conduct of business during the Term, the Parties, at all levels, shall strive to:

- (a) recognise that the maximum value of the relationship can only be achieved through working together collaboratively as if in a partnership and with an understanding of the joint objectives of this Agreement and also each other’s objectives;
- (b) plan, organise, direct, and manage the relationship jointly;
- (c) assume the commitment and integrity of each other;
- (d) accept the need to be open and honest;
- (e) respect each other’s confidence, in particular by not misusing commercial or confidential information provided by the other Party; and
- (f) jointly accept responsibility for finding an appropriate solution to problems.

2.4 The creation and maintenance of the Governance Principles that will sustain day-to-day contacts between the Parties will require commitment of the senior management teams. In order to reinforce desirable behaviours, these teams and other key managers will need to act consistently in a manner supportive of the Governance Principles. Accordingly, both Parties recognise the benefit in maintaining stability of key managers and their inter-relationships. Moves of these key managers will be jointly managed with the aim of minimising the risks of destabilising the overall relationship.

- 2.5 The Parties agree that they will use Commercially Reasonable Efforts to abide by the Governance Principles at all levels of their organisation involved in the operation of the Agreement.
- 2.6 The Parties agree that these Governance Principles:
- (a) apply as between the Customer and the Supplier, and under this Agreement do not extend to any other party; and
 - (b) are not intended to change or amend any other obligation of the Parties set out in this Agreement.

3 MANDATORY REVIEW BODIES

- 3.1 The Parties shall attend the following review bodies as described further in this Section 3 and Annex 8-1 to this Schedule.

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- 3.2 The joint review bodies that govern all agreements in force between the parties are set out in Annex 8-1 to this Schedule.
- 3.3 The roles of the required attendees are specified under each of the joint review bodies. The named individuals performing such roles as at the Effective Date are specified in Annex 8-2 (Meeting Attendees).
- 3.4 This Section 3.4 describes the Contract Management Meetings which will be held at the frequency stated in the table at Section 3.1 above:

[Redacted]

4 CUSTOMER GOVERNANCE ARRANGEMENTS

- 4.1 The Parties will provide to each other and regularly update the names of the people who are members of the various governance bodies.
- 4.2 The Supplier shall be invited by the Customer, on an ad-hoc basis, to attend Customer boards and Customer management committees to discuss matters relating directly to the Services provided, or potentially to be provided, under this Agreement.
- 4.3 In addition, the Supplier has a standing invitation to attend, or shall participate fully when agreed in a number of other Customer management bodies as required (but may be excluded when matters of a sensitive nature, or which relate to the performance of this Agreement, are being considered).

5 ESCALATION PROCESS

- 5.1 If any issue of concern arises between the Customer and the Supplier, the Parties will use Commercially Reasonable Efforts to resolve such issue at the level at which such issue originates as quickly as the circumstances allow and in accordance with the provisions of Sections 5.2 to 5.15 below.
- 5.2 The hierarchy of levels of the Escalation Process are (from low to high):
- (a) Weekly Service Review Meetings;
 - (b) Contract Management Meetings;
 - (c) **an *ad hoc* meeting of the Customer's Senior IT Business Owner and/or Commercial Deputy Director and the Supplier's Client Managing Director HMRC; and**
 - (d) **Strategic Leadership Meetings (as set out in Annex 8-1).**
- 5.3 Where an issue arises which cannot be resolved at the level at which such issue originates the Customer and the Supplier may refer it to the next highest level in the Escalation Process as set out in Section 5.2 above unless one Party requests that a particular issue receives consideration more quickly or at a more senior level, in which case the issue will be escalated to that level.
- 5.4 This Escalation Process is intended to be a guide for the Parties to resolve issues rapidly as they arise. It is not intended that this Escalation Process should be operated inflexibly or so as to prevent an issue being resolved at the most appropriate level as quickly as possible.
- 5.5 Where, at any level, it is decided that the issue has been properly escalated, the Parties will use Commercially Reasonable Efforts to resolve the issue.
- 5.6 Where a resolution is agreed, the decision, together with any implementation plan or other consequences, will be set out in writing and signed by the Parties.
- 5.7 Except where an issue requires rapid resolution, escalation of an issue will be by written Issue Statement to the next level by the Party escalating the issue. The “**Issue Statement**” will contain at least the following information:
- (a) name and business address of originator;
 - (b) date the issue was first raised;
 - (c) description of the issue, including any history of similar problems;
 - (d) the implications of the issue, its severity and the degree of urgency involved;

- (e) an estimate of the current, and potential, cost of the issue; and
 - (f) names and addresses of others involved who may need to be consulted.
- 5.8 This Escalation Process will be overseen and managed via the Contract Management Meetings. Where the issue cannot be resolved at the Contract Management Meetings, the Parties must document the issues and interpretation of the contractual position fully. This means that, in addition to the information provided in Issue Statement, both Parties will set out their understanding of the issue, any contractual perspective relied on, and the impact of the issue on the Parties before escalating to the Strategic Leadership Meetings.
- 5.9 Within five (5) Working Days of a decision to escalate, an Issue Statement will be produced and agreed between the originator and his counterpart to whom a copy of the Issue Statement will be provided. Where the Issue Statement cannot be agreed, any additional comments the other party may require will be appended to the Issue Statement.
- 5.10 Where an issue requires rapid resolution, the originator may contact the next level in his organisation, and his counterpart, by telephone, or in person, and follow up with the written Issue Statement within five (5) Working Days.
- 5.11 Where required in order to perform its obligations under this Agreement the Supplier shall work with other suppliers of the Customer. The Supplier will act professionally in all of its dealings with other suppliers of the Customer and in accordance with the Governance Principles. Where an issue has arisen between the Supplier and another supplier of the Customer that relates to the performance of the Supplier's obligations to the Customer under this Agreement:
- (a) the Supplier shall in the first instance use its reasonable endeavours to resolve such issue directly with that supplier by commercial negotiation and only where necessary should issues be escalated to the Customer in accordance with this Schedule 8 (Governance); and
 - (b) the Customer shall ensure that the Customer's other supplier shall also in its performance of that other supplier's obligations to the Customer shall in the first instance use its reasonable endeavours to resolve such issue directly with the Supplier.
- 5.12 If either Party to this Agreement has reasonable grounds to believe that any issues that are subject to the Escalation Process involve both the Supplier and other suppliers of the Customer ("**Related Third Parties**"), such Party may serve a notice on the other requesting that the issue be treated as a multi-party dispute ("**Multi-Party Dispute**"), setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that issue. The Parties shall agree within five (5) Working Days whether the issue is:

- (a) a Multi-Party Dispute, in which case the Customer shall serve a notice to that effect, specifying the Related Third Parties ("**Multi-Party Procedure Initiation Notice**"); or
 - (b) not a Multi-Party Dispute, in which case the Escalation Process shall continue to apply.
- 5.13 A Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising executive level representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
 - (a) the Customer;
 - (b) the Supplier; and
 - (c) each Related Third Party involved in the Multi-Party Dispute,
(together "**Multi-Party Dispute Representatives**").
- 5.14 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
 - (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice in Telford (or such other place as the Parties may agree) at such time as the Parties may agree or, if the Parties do not reach agreement on the time within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time specified by the Customer, provided that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the Parties shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and between the Customer and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 5.15 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty (20) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) the Customer shall be required (within a further ten (10) Working Day) to determine a proposed resolution of the Multi-Party Dispute by notice in writing to the Supplier and all Related Third Parties for acceptance by each of them ("**Customer Proposed Determination**"); and
- (b) in the event that Customer Proposed Determination is not accepted by any of the Supplier or any of the Related Third Parties, or the Customer elects not to determine a Customer Proposed Determination within the relevant time period, either Party may invoke the Alternative Dispute Resolution process in which case Section 5.16 shall apply. For the avoidance of doubt any such Alternative Dispute Resolution process shall operate as between the Parties only, but the Supplier agrees to provide reasonable cooperation to the Customer in regard to any similar mediation process operated as between the Customer and any of the Related Third Parties in respect of any issues which involve the Supplier, including, where reasonably required, attending as a witness.

5.16 **Alternative Dispute Resolution**

If an issue is not resolved by the process set out in Sections 5.2 to 5.10, or Sections 5.11 to 5.15, above as applicable, the Customer or the Supplier may invoke the following Alternative Dispute Resolution process which will require both Parties to adhere to the following procedure:

- (a) either Party may propose to the other(s) in writing that structured negotiations are entered into with the assistance of a Neutral Adviser;
- (b) the Neutral Adviser will either be agreed upon by the Parties or, in the absence of agreement, appointed by the Centre for Effective Dispute Resolution Process (CEDR);
- (c) within fourteen (14) days of the appointment of the Neutral Adviser, the Parties will meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations;
- (d) unless concluded with a written legally binding agreement, all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any other proceedings;
- (e) the Parties may request the Neutral Adviser to issue written recommendations, and if the Neutral Adviser is willing to make such recommendations and the Parties accept such recommendations or otherwise reach agreement on the resolution of the dispute, such agreement will be reduced to writing and, once it is signed by the authorised representatives of each Party, will be binding on the Parties; and

- (f) in the event that Alternative Dispute Resolution process is initiated in accordance with this Section 5.16 and the Parties fail to reach agreement in the structured negotiations within sixty (60) days of the appointment of the Neutral Adviser (or such other period as may be agreed by the Parties having due regard to the circumstances) any Party may withdraw from the structured negotiations. Any continuing dispute or difference between the Parties may then be referred to the English courts.

- 5.17 Unless agreed otherwise by the Parties, each Party will bear its own costs and expenses associated with participating in the processes set out in Sections 5.2 to 5.10 and Sections 5.11 to 5.15 and in the Alternative Dispute Resolution process and any third party costs, including fees payable to the Neutral Adviser and in relation to the hiring of a venue, will be shared equally by the Parties.

5.18 Special Procedure following a Notice of Termination

If one Party has delivered a notice of Termination of the Agreement to the other Party, and there is a dispute between the Parties as to such Termination or its effect then the Customer's director with overall responsibility for the Agreement and the Supplier's senior executive with overall account responsibility for the Agreement (or a nominee appointed by such persons or the relevant individual holding a similar position) shall meet within fourteen (14) days after the date of such delivery for the purpose agreeing how to address the dispute. The officers referred to above may include as attendees at such meeting a reasonable number of business managers and/or legal or other advisors as such officers require to assist in the purpose of such meeting. For the avoidance of doubt this engagement process shall not delay or prevent a valid Termination.

5.19 Formal Dispute Resolution

Nothing in this Schedule will prevent either Party from at any time commencing court proceedings relating to any dispute arising from the Agreement after having notified the other Party in writing of its intention to withdraw from the procedures set out in this Section 5.

6 CONTRACT MANAGEMENT PROCEDURES

- 6.1 The Supplier and the Customer shall both, by the Effective Date, have in place internal corporate governance arrangements to manage their roles and responsibilities under this Agreement that meet Good Industry Practice.
- 6.2 Both Parties shall fully co-operate with the other and its management team in the operation of the procedures set out in this Section 6.
- 6.3 The Supplier will support the operation of contract management procedures in accordance with Schedule 2 (**Services**).

6.4 The Customer's Contract Management Team shall manage the Agreement on behalf of the Customer using such procedures as set out in this Agreement or the Customer may from time to time reasonably require, including:

(a) Strategic Planning

Procedures required to determine, and report on, the contractual implications of strategic planning initiatives undertaken by the Customer.

(b) Financial Management

The Customer's procedure(s) will:

- (i) provide and maintain a forecast of the proposed Service Charges;
- (ii) review individual CCNs to ensure that the commercial impacts are properly presented and incorporated into financial plans;
- (iii) with the support of the Supplier, take account of agreed CCNs, as well as projected CCNs and match the requirement to the funds available;
- (iv) make necessary commitments to ensure that the Customer obtains Services in the most cost-effective manner in accordance with the Agreement, while enabling the Supplier to have sufficient financial certainty through the ordering procedure set out in Schedule 7 Financial Matters; and
- (v) monitor the consumption of resource against levels committed and track expenditure in accordance with the procedures set out in Schedule 7 Financial Matters and Schedule 6.3 Projects and Ordering.

(c) Performance Monitoring

This Customer procedure will collate information from other procedures, including the requirements of Schedule 2.2 Performance Levels and Schedule 8.2 Reports and Records, and present it in agreed formats for required reporting cycles in order to:

- (i) provide user information;
- (ii) enable performance trends to be properly monitored;
- (iii) provide management information regarding:
 - (A) speed of response;
 - (B) problems and faults; and
 - (C) adherence to quality standards; and

- (iv) facilitate the operation of the Service Credit arrangements and perform the necessary calculations.

(d) Cost Monitoring

This procedure will in respect of the Fujitsu Project Services only:

- (i) enable the Customer to receive and review financial information from the Supplier;
- (ii) regulate changes in the Supplier's costs and track the impact of CCNs on the Charges;
- (iii) undertake regular reviews of the Supplier's financial performance on these aspects of the Agreement; and
- (iv) track any relevant purchases, monitoring the Supplier's procurement function.

(e) Performance of Annual Review of Contract Prices

This procedure will agree any necessary adjustments to the Rate Card(s) used for Charges in respect of in respect of the Fujitsu Project Services as a result of an annual review of the Supplier's cost rates in accordance with Schedule 7 Financial Matters.

(f) Responding To Performance Reporting And Escalation

This procedure will initiate action to resolve problems raised through other procedures using the Escalation Process, as appropriate.

(g) Performance Improvements

This procedure will evaluate statistics from other procedures to determine the potential for the Supplier performance improvement in the provision of the Services and in the Service Levels. It will also review the Supplier's performance improvement plans, track their implementation and compare the actual delivered benefits with those predicted.

(h) Tracking of Third Party Use Of Assets

This procedure will provide for the establishment, updating and maintenance, of a register of any Customer Assets and Supplier Assets used in the provision of the Services including third party use. It will further support the Customer's requirements for assuring the security and confidentiality of Customer Data.

(i) Accommodation

This procedure will support the resolution of issues arising from the Supplier's occupation of the Customer's Accommodation (whether exclusive occupancy property or shared occupancy property) and from the provision of services to the Supplier by the Customer relating to such Customer Accommodation. It will also track the performance by the Customer against its obligations in Schedule 2.6 (**Accommodation**).

(j) Change Control

This procedure will control and manage Change in accordance with Schedule 8.3 (**Change Control Procedure**).

(k) Audit Access

This procedure will facilitate the conduct of Audits in accordance with Schedule 7.5 Financial Reports and Audit Rights).

(l) Monitor Unit Costs

This procedure is an internal Customer process. It will calculate the unit costs of technology services provided to the Customer, monitor trends and report progress towards key objectives.

(m) Administration

This procedure will serve all other procedures set out in this Agreement for the distribution of outputs between the Customer and the Supplier under the Agreement. In addition, it will maintain libraries, call logs and audit trails in connection with the provision of the Services and the performance of the Agreement.

(n) General

Such other processes as are reasonably necessary to manage the Agreement.

7 PERFORMANCE IMPROVEMENTS

7.1 Any proposals by the Supplier for improving the provision of the Fujitsu Services shall ensure the provision of the Fujitsu Services at least to the standards required by the Agreement or as subsequently agreed by the Customer.

7.2 The Supplier shall discuss proposals for improving the provision of the Fujitsu Services with the Customer in accordance with the performance improvements procedure set out in Section 6.4(g) above.

- 7.3 Both Parties shall at all times give due regard to any proposals made by the other for improving the provision of the Services.

8 GOVERNANCE REVIEW

- 8.1 Twelve (12) months following the Effective Date, the Parties shall review and, if appropriate, agree any necessary changes to this this Schedule 8.1 (**Governance**).

ANNEX 8.1-1**CROSS-AGREEMENT BODIES****1 INTRODUCTION**

- 1.1 This Annex 8.1 -1 describes the joint review bodies that govern all agreements in force between the Parties and all services delivered by the Supplier to the Customer under those agreements. The bodies are made up of representatives from the Parties. As described below, the three (3) cross-agreement joint review bodies shall meet regularly during the Term.

2 Strategic Leadership Meetings – Six monthly

- 1.2 The Strategic Leadership Meetings shall take place as a minimum twice every year starting on 1 October each year of the Term.

Purpose

- 1.3 The aims and purpose of the Strategic Leadership Meetings shall be for the Parties executive officers to meet and discuss the operation and future of the services provided by the Supplier for the benefit of the Customer including to:
- (a) review, discuss and agree the strategic direction of the relationship between the Parties across all agreements in force between the Parties and all services delivered by the Supplier to the Customer;
 - (b) review progress against the joint objectives and the joint business plan;
 - (c) review and assess the success of this Agreement and other agreements between the Parties; and
 - (d) by exception, consider and resolve as any issues escalated to it which have not been capable of resolution at other levels of governance.

Attendees

- 1.4 The Strategic Leadership Meetings shall be attended by:
- (a) on the part of the Customer, the HMRC Chief Executive and First Permanent Secretary, Chief Digital Information Officer and Chief Financial Officer; and
 - (b) on the part of the Supplier, the Head of UK and Ireland region, and Client Managing Director HMRC,

or such individuals of requisite seniority if the aforementioned individuals are not available or the Parties agree otherwise.

Meetings

- 1.5 The responsibility for arranging routine Strategic Leadership Meetings shall be that of the Supplier's Client Managing Director HMRC.
- 1.6 Either Party may request the other to attend an ad hoc Strategic Leadership Meeting by giving no less than seven (7) days' notice requesting the same.
- 1.7 Unless otherwise agreed between the parties each Strategic Leadership Meeting shall be for a minimum of one (1) hour and shall be face to face.
- 1.8 Strategic Leadership Meetings shall alternate between the Customer's premises and the Supplier's premises.

Agenda

- 1.9 The Supplier's Client Managing Director HMRC shall invite matters for discussion fourteen (14) days prior to each Strategic Leadership Meeting and shall issue an agenda seven (7) days in advance.

Conduct

- 1.10 The Parties shall be free to discuss and agree how to conduct each Strategic Leadership Meeting.

Minutes

- 1.11 Strategic Leadership Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting. Unless otherwise agreed between the Parties the intent of Minutes for the Strategic Leadership Meetings is to record any agreement reached and not to reflect all of the discussion.
- 1.12 At each Strategic Leadership Meeting the Parties shall agree the time date and location of the next Strategic Leadership Meetings so that they always have two (2) future meetings planned and arranged.

Initial dates

- 1.13 The first Strategic Leadership Meetings shall be held on:
- (a) A date within 7 days of the Effective Date at 10.30am (at which meeting a date for a further two meetings shall be agreed); and
 - (b) A date within 6 months of the first meeting at 10.30am (at which meeting a date for a further two meetings shall be agreed).

2 Relationship Management Meetings - Quarterly

Scope

2.1 The Relationship Management Meetings held between the Customer and the Supplier will at a minimum cover the following areas:

- (a) Customer and Supplier business direction and strategic planning across all agreements in force between the Parties and all Services delivered by the Supplier to the Customer;
- (b) relevant technology direction;
- (c) progress against agreed key objectives and the joint business plan;
- (d) review and manage the relationship development and the strategic initiatives in the joint business plan to ensure they remain on track and drive anticipated change and value; and
- (e) identify further opportunities that will be incorporated in the joint business plan going forward.

Purpose

2.2 The aims and purpose of the Relationship Management Meetings are to:

- (a) allow the Customer to update the Supplier as to its business plans and requirements and if possible discuss how to align these to the joint business plans being followed by the Parties;
- (b) review, discuss and agree the management of this Agreement and all other agreements between the Parties;
- (c) review and discuss progress achieved and any issues arising in respect of the relationship between the Parties during the previous Quarter;
- (d) by exception to consider and resolve as any issues including any issues escalated to it which have not been capable of resolution at other levels of governance and in default of resolution of such issues to refer the same to the next Strategic Leadership Meetings if resolution is not possible in the meantime;
- (e) review the adequacy and effectiveness of the prevailing governance arrangements in the light of any relevant management, operational and audit reports;
- (f) ensure that senior managers on both sides have a common understanding of the current operation of this Agreement and all other agreements between the Parties;
- (g) review the overall operation of the agreements and identify any problem areas, in particular considering any issues and risks that might prejudice the relationship between the Parties or the successful operation of the Governance Principles;

- (h) evaluate each Party's skills and resource requirements, and where appropriate ensure that necessary on-going high-level technical and strategic skills are available to meet the Customer's requirements;
- (i) take a forward look to identify any future major developments and also any opportunities and risks that will potentially impact the Services; and
- (j) agree any necessary actions flowing from any of the above and to follow up any resultant action plans.

Attendees

2.3 The Relationship Management Meetings shall be attended by:

- (a) on the part of the Customer:
 - (i) Director for Enterprise Platform Services;
 - (ii) CCM IT Assistant Director; and
 - (iii) such other attendees as required for the items on the agenda for the applicable meeting; and
- (b) on the part of the Supplier:
 - (i) Client Managing Director HMRC and Head of Delivery; and
 - (ii) such other attendees as required for the items on the agenda for the applicable meeting.

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Relationship Management Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Relationship Management Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

Pre-Meeting

2.4 The Parties shall provide the applicable Reports and Customer Reports in advance of this meeting in accordance with Schedule 8.2 Reports and Records.

Meetings

2.5 The responsibility for arranging routine Relationship Management Meetings shall be that of the Supplier's Client Managing Director HMRC.

2.6 Either Party may request the other to attend an ad hoc Relationship Management Meeting by giving no less than seven (7) days' notice requesting the same.

2.7 Unless otherwise agreed between the Parties each Relationship Management Meeting shall be for a minimum of one (1) hour and shall be face to face.

2.8 Relationship Management Meetings shall alternate between the Customer's premises and the Supplier's premises.

Agenda

2.9 The Supplier's Client Managing Director HMRC shall invite matters for discussion fourteen (14) days prior to each Relationship Management Meeting and shall issue an agenda seven (7) days in advance.

Conduct of meetings

2.10 Customer's Senior IT Business Owner shall chair the meeting and conduct the proceedings in an orderly fashion against the standing agenda agreed between the parties from time to time.

2.11 At the first Relationship Management Meeting the Parties shall agree the standing Agenda for all subsequent Relationship Management Meetings.

Minutes

2.12 Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting.

2.13 At each Relationship Management Meeting the Parties shall agree and minute the time date and location of the next Relationship Management Meetings so that they always have three (3) future meetings planned and arranged.

Initial dates

2.14 The first Relationship Management Meetings shall be held on:

- (a) an agreed date in April 2023 at 10.30am (at which meeting a date for a further three meetings shall be agreed);
- (b) an agreed date three months later at 10.30am (at which meeting a date for a further three meetings shall be agreed); and
- (c) an agreed date three months later at 10.30am (at which meeting a date for a further three meetings shall be agreed).

3 Operational Management Meetings – Monthly

Purpose

3.1 The aims of the Operational Management Meetings are to report on and consider:

- (a) the Supplier's performance under the agreements and contract and risk management;
- (b) commercial management;

- (c) relationship and value work stream management; and
- (d) service and programme review meetings.

Attendees

3.2 The Operational Management Meetings shall be attended by:

- (a) on the part of the Customer:
 - (i) Supplier Management Lead
 - (ii) CCM Assistant Director;
 - (iii) Director for Enterprise Cloud Services; and
 - (iv) such other attendees as required for the items on the agenda for the applicable meeting; and
- (b) on the part of the Supplier:
 - (i) Head of Delivery;
 - (ii) Service Owner; and
 - (iii) such other attendees as required for the items on the agenda for the applicable meeting.

Each Party shall, unless otherwise agreed, arrange for a delegate to be provided for each attendee listed, in the situation where an attendee cannot attend the Operational Management Meeting. Each individual delegate shall be of requisite seniority to allow the business of the Operational Management Meeting to be conducted if the normal attendees are unavailable or the Parties agree otherwise.

Pre-Meeting

3.3 The Parties shall provide Reports and Customer Reports in advance of this meeting in accordance with Schedule 8.2 Reports and Records.

Meetings

- 3.4 The responsibility for arranging routine Operational Management Meetings shall be the joint responsibility of the Supplier's Service Owner and the Supplier Management Lead for the Customer.
- 3.5 Either Party may request the other to attend an ad hoc Operational Management Meeting by giving no less than three (3) Working Days' notice requesting the same or earlier in the case of an emergency.

- 3.6 Unless otherwise agreed between the Parties each Operational Management Meeting shall be for a minimum of one (1) hour and shall be by telephone conference or face to face.

Agenda

- 3.7 The Operational Management Meetings will follow a standing agenda agreed between the Parties to reflect the above purpose of these meetings. Either Party shall be permitted to ask for other items to be added to the agenda or be raised as AOB at the Operational Management Meeting.

Conduct of meetings

- 3.8 The Customer's Supplier Management Lead shall chair the meeting and conduct the proceedings in an orderly fashion against the standing agenda agreed between the Parties from time to time and additional agenda items or matters of AOB raised by either Party.
- 3.9 At the first Operational Management Meeting the Parties shall agree the standing Agenda for all subsequent Operational Management Meetings.

Minutes

- 3.10 Operational Management Meetings shall be minuted by the Customer and minutes circulated within seven (7) days of each meeting for agreement.
- 3.11 At each Operational Management meeting the Parties shall agree and minute the time date and location of the next Operational Management Meetings so that they always have three (3) future meetings planned and arranged.

Initial dates

- 3.12 The first Operational Management Meetings shall be held on:
- (a) an agreed date in April 2023 at 10.30am by telephone conference (at which meeting a date for a further three meetings shall be agreed);
 - (b) an agreed date in May 2023 at 10.30am by telephone conference (at which meeting a date for a further three meetings shall be agreed); and
 - (c) an agreed date in June 2023 at 10.30am by telephone conference at which meeting a date for a further three meetings shall be agreed).

ANNEX 8-2

MEETING ATTENDEES

SUPPLIER ATTENDEES

[Redacted]

CUSTOMER ATTENDEES

[Redacted]



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.3 (November 2020)

SCHEDULE 8.2 | Reports and Records

Schedule 8.2 | Reports and Records

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft transparency reports in accordance with Annex 1 ("Transparency Reports").
- 1.2 If the Authority rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2. OTHER REPORTS

The Supplier shall provide to the Authority with reports in accordance with Schedule 7.5.

3. RECORDS

The Supplier shall retain and maintain records in accordance with Schedule 7.5.

ANNEX 1 | TRANSPARENCY REPORTS

[Redacted]



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.3 (November 2020)

SCHEDULE 8.3 | Change Control Procedure

Schedule 8.3 | Change Control Procedure

1.1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager”		the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change”		any change to this Agreement;
“Contract Change Request”		a written request for a Contract Change as described in Paragraph 2.4(a);
“Change Communication”		any Contract Change Request, Contract Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Contract Change”		any Change to this Agreement other than an Operational Change or a change to a specific Fujitsu Project Service.
“Fast-track Change”		any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Contract Assessment”	Impact	an assessment of a Contract Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”		has the meaning given in Paragraph 4.3;
“Receiving Party”		the Party which receives a proposed Contract Change; and
“Supplier Change Manager”		the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes (including Contract Changes), except:

- a) Changes to Schedule 11 (*Collaboration*) or that require a Change to that Schedule (which shall be managed in accordance with Schedule 11 (*Collaboration*));
- b) Changes the Supplier is not technologically capable of providing and or where such a Change cannot be sourced from a third party;
- c) Changes prevented by Law;
- d) where such a Change relates to the introduction of a New Data Centre;
- e) Changes that require a material change to the scope of the Fujitsu Services and or would amount to New Services;
- f) the Change would result in a reduction in the Charges other than as permitted in accordance with Schedule 7.1 and the Fujitsu Services Pricing File;
- g) the Change would result in a change to the Charges that the Parties cannot agree upon from a Charges perspective including any Changes to the principles of the Flexible Collar mechanism; and
- h) Changes that remove the Supplier's discretion as to whether to take on a new Fujitsu Project Services project. (Note: Changes relating to Fujitsu Project Services which can be processed under Schedule 6.3 (Projects and Ordering) are not subject to the processes outlined below unless the Parties explicitly agree otherwise.)

all of which may only be implemented as Changes only with the discretionary agreement of the Parties and without such discretionary agreement being fettered or managed in accordance with this Schedule.

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

- d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change results from Fujitsu Project Services which require testing and/or a programme for implementation, then the Parties shall agree the appropriate procedures, and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- a) within a reasonable time following the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.2:

- a) the costs of preparing each Contract Change Request shall be borne by the Party making the Contract Change Request; and

- b) the costs incurred by the Supplier in undertaking a Contract Change Impact Assessment shall be borne by the Party making the Contract Change Request provided that the Authority shall not be required to pay any such costs if:
 - i. such costs are less than [Redacted];
 - ii. the Supplier is able to undertake the Contract Change Impact Assessment by using resources already deployed in the provision of the Services; or
 - iii. such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule **Error! Reference source not found. (*Charges and Invoicing*)** and the Fujitsu Services Pricing File. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CONTRACT CHANGE REQUEST

4.1 Either Party may issue a Contract Change Request to the other Party at any time during the Term. A Contract Change Request shall be substantially in the form of:

- a) Annex 1, or
- b) where the Parties agree it is expedient or appropriate (e.g. for a minor or substantially agreed Change), in the form of Annex 2 containing draft content to be reviewed and agreed between the parties,

and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Contract Change Request, then if appropriate (having regard to the nature of the Contract Change Request) it shall also provide a Contract Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Contract Change Request.

4.3 If the Authority issues the Contract Change Request, then if appropriate (having regard to the nature of the Contract Change Request) the Supplier shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Contract Change Request an estimate ("**Impact Assessment Estimate**") of the cost of

preparing a Contract Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Contract Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

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

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

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

5 IMPACT ASSESSMENT

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

- a) details of the proposed Contract Change including the reason for the Contract Change; and
- b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - i. the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - ii. the format of Authority Data, as set out in the Services Description;
 - iii. the Milestones, Transition Plan or Project Plan and any other timetable previously agreed by the Parties;
 - iv. other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- d) details of the cost of implementing the proposed Contract Change;

- e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Contract Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Contract Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Contract Change Request and the Contract Impact Assessment, then within five (5) Working Days of receiving the Contract Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Contract Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Contract Change Request and Contract Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 1.1(a)d) and 1.1(a)e) shall:
- a) be based on the Fujitsu Services Pricing File;
 - b) facilitate the Financial principles set out in Schedule 7.1 Charges and Invoicing;
 - c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - d) include full disclosure of any assumptions underlying such Contract Impact Assessment;
 - e) include evidence of the cost of any assets required for the Change; and
 - f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Contract Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Contract Change Request and the Contract Impact Assessment and shall do one of the following:
- a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - c) in the event that it reasonably believes that a Contract Change Request or Contract Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Contract Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Contract Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF REJECTION

- 7.1 Following a Contract Impact Assessment, if:

- a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - i. materially and adversely affect the risks to the health and safety of any person; and/or
 - ii. require the Services to be performed in a way that infringes any Law; and/or
- b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

7.2 then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Contract Impact Assessment pursuant to Paragraph 4.3.

7.3 For the avoidance of doubt the Supplier also has the right to reject a Contract Change that is a Change to which Paragraph 2.1 applies.

8 FAST-TRACK CHANGES

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

8.2 If:

- a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and
- b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed [Redacted] and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

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

9 OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- a) have an impact on the business of the Authority;
 - b) require a change to this Agreement;
 - c) have a direct impact on use of the Services; or
 - d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
- 9.3 The RFOC shall include the following details:
- a) the proposed Operational Change; and
 - b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC and shall promptly notify the Authority when the Operational Change is completed.

10 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 45 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1 | CONTRACT CHANGE REQUEST FORM

CCR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR CONTRACT IMPACT ASSESSMENT BY:		
ASSIGNED FOR CONTRACT IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2 | CHANGE AUTHORISATION NOTE

FUJITSU SERVICES AGREEMENT CAN xxx Version xx

Change Authorisation Note (CAN)

[Redacted]



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SCHEDULE 8.4 | Dispute Resolution Procedure

Schedule 8.4 | Dispute Resolution Procedure

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.1;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph Error! Reference source not found. ;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph Error! Reference source not found. to mediate a Dispute;

2. DISPUTE NOTICES

1.1 If a Dispute arises then:

the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute;

- (b) the Authority and the Supplier shall use their reasonable endeavours to resolve the Dispute in accordance with the escalation process set out in Schedule 8.1 Governance;
- (c) If such escalation fails to resolve the Dispute within a reasonable period normally within twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

1.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority).
- 2.3 Subject to Schedule 8.1 Governance and Paragraphs 2.5 and 3.2, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- (a) first by commercial negotiation (as prescribed in Paragraph 4);
 - (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5) and or by ADR in accordance with Schedule 8.1 Governance; and
 - (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 48 (Governing Law and Jurisdiction)).
- 2.4 Specific issues may by agreement between the Parties be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 1.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Related Third Party Dispute Initiation Notice or proceedings under Paragraph 8 (Urgent Relief).

3 EXPEDITED DISPUTE TIMETABLE

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

subsequent stages by the period agreed in the extension.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, the Parties shall refer the Dispute to the Operational Board for consideration and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Operational Board, the Dispute shall be escalated to the Strategic Board. If the Parties are unable to resolve the Dispute within ten (10) Working Days of escalation to the Strategic Board then the Authority may, at its sole discretion, escalate any Dispute to the Executive Board for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Executive Board then the provision of paragraph 4.2 shall apply.
- 4.2 If the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice, either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “Mediation Notice”).

5 MEDIATION

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

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

7. ARBITRATION

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

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph **Error! Reference source not found.** or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Authority serves a Counter Notice, then:

- 1.1.1.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph **Error! Reference source not found.** shall apply; or
- 1.1.1.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

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

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

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to Paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (e) the Authority shall decide in its discretion whether the Dispute shall be determined by a single arbitrator or a panel of three arbitrators. The single arbitrator or chair of the arbitral tribunal shall be a senior English-qualified lawyer who shall be a QC of at least ten years standing or a retired judge;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.



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SCHEDULE 8.5 | Exit Management

Schedule 8.5 | Exit Management

Exit Management

1. The parties acknowledge in respect of the Fujitsu Services and the Fujitsu Project Services that the majority of the provisions relating to Exit applicable to the existing Additional Services as a result of the earlier Expired Services will no longer be appropriate and directly applicable to the Fujitsu Services and Fujitsu Project Services at their expiry or termination.
2. Unless otherwise agreed between the Authority and the Supplier, the provision of the Fujitsu Services shall be the only services required for exit relating to the Additional Services delivered by the Supplier to the Customer prior to the Effective Date.
3. Such Services shall also constitute all of the Termination Assistance required after the Effective Date for the Fujitsu Services and or the Fujitsu Project Services. The majority of the Fujitsu Services shall simply exit from this Agreement as a consequence of the planned migrations away from the Fujitsu Services as a consequence of the Customer's SOTF and other programmes.
4. The Parties have however agreed that the following principles shall apply to exit management from the Fujitsu Services:
 - 4.1. The Supplier agrees to provide the Customer with exit assistance in respect of subsequent exit from the Fujitsu Services and or Fujitsu Project Services on a similar basis to that exit assistance applicable up to the Effective Date in respect of the Additional Services.
 - 4.2. Subject to payment for any Termination Assistance in respect of the Fujitsu Services and or Fujitsu Project Services, where applicable, the Supplier shall provide the Customer with all information and data reasonably required by the Customer for:
 - 4.2.1. the exit of the Fujitsu Services and or the Fujitsu Project Services;
 - 4.2.2. the replacement of the Fujitsu Services by the Customer; and
 - 4.2.3. the transfer of Customer Data and HMRC Customer Data, subject always to compliance by the Customer with its obligations in this respect;

including but not limited to the relevant information and data set out in the updated Data Matrix (reference: Appendix 9-4 Data Matrix - Project X template 2 March 2022.xlsx) for Fujitsu Services now attached here:

[Redacted]

- 4.3. The Supplier shall provide any assistance reasonably required by the Customer in respect of the termination of the Fujitsu Services including the transfer of Customer

Data back to the Customer and subject to payment for any Termination Assistance any knowledge transfer and volumetrics and service management information reasonably required. All such assistance shall be chargeable in accordance with the Supplier's Rate Card.

- 4.4. The Parties agree that if the Customer requires any additional exit assistance in respect of Fujitsu Services and or Fujitsu Project Services such assistance shall be discretionary and also chargeable in accordance with the Supplier's Rate Card.
- 4.5. The Parties agree that such assistance shall not oblige the Supplier to provide outputs from its Fujitsu Services on exit where the same contain the Suppliers Intellectual Property or Confidential Information to which the Customer is not expressly entitled.



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SCHEDULE 8.6 | Service Continuity Plan and Corporate Resolution Planning

Schedule 8.6 | Service Continuity Plan and Corporate Resolution

1. PLANNING

- 1.1 The Supplier shall continue to maintain for the Fujitsu Services the service continuity plans for the Expired Services and Additional Services that details the processes and arrangements that the Supplier follows to:
- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Subcontractor and/or any Supplier Group member); and
 - (b) the recovery of the Services in the event of a Disaster.
- 1.2 The Supplier shall from the Effective Date for the Fujitsu Services:
- (a) ensure that appropriate business continuity plans are in place for Supplier processes required to ensure that Service Levels are met; and
 - (b) produce, maintain and test business continuity plans for the Supplier's internal processes required to deliver services to the Customer.
- 1.3 The Supplier shall provide a verbal report quarterly, at an appropriate governance forum, that:
- (a) Lists all business continuity plans and evidence of the business impact review and business recovery strategy for each plan;
 - (b) Provides details of the testing programme; and
 - (c) Details how any recommendations from the testing will be implemented and when amendments to the plan will be made.



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SCHEDULE 8.7 | Conduct of Claims

Schedule 8.7 | Conduct of Claims

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “Indemnifier”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraph **Error! Reference source not found.**, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph **Error! Reference source not found.**, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "Sensitive Claim"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.



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SCHEDULE 9.1 | Staff Transfer

Schedule 9.1 | Staff Transfer

STAFF TRANSFER

PART A | Transferring Authority Employees at commencement of Services

- 1 The Authority and the Supplier agree that the commencement of the provision of the Fujitsu Services (or of any part of the Fujitsu Services and or Fujitsu Project Services) will not be a Relevant Transfer in relation to any employees of the Authority and/or any other supplier.

PART B | Transferring SUPPLIER Employees at TERMINATION of Services

- 2 The Authority and the Supplier agree that it is intended that the termination (including expiry) of the provision of the Fujitsu Services (or of any part of the Fujitsu Services and or Fujitsu Project Services) will not be a Relevant Transfer in relation to any employees of the Supplier.

PART C | SECONDMENT OF SUPPLIER PERSONNEL TO THE CUSTOMER

- 3 Annex 9.1-A sets out the Customer's standard Secondment Agreements in respect of any secondment of personnel from the Supplier to the Customer or from the Customer to the Supplier.
- 4 The Supplier agrees that these Secondment Agreements shall be used as a template where the Supplier seconds personnel to or accepts secondees from the Customer pursuant to this Agreement. Every secondment will be discussed on a case-by-case basis which may result in amendments being made to the template Secondment Agreement.
- 5 In particular the following issues will be discussed between the Parties on a case-by-case basis:
 - 5.1 responsibility for the payment of salary, benefits and tax to the seconded personnel;
 - 5.2 confidentiality issues;
 - 5.3 events entitling the Parties to terminate the secondment;
 - 5.4 the standard to be used by the Parties when procuring performance of the seconded personnel; and
 - 5.5 liability for actions of the seconded personnel.

ANNEX 9.1 – A

SECONDMENT

SECONDMENT AGREEMENT - FORM A

SECONDMENT OF [] ("Secondee")

FROM The HMRC

TO [Supplier]

This agreement is made between:

1. The Commissioners of the HMRC (the "**HMRC**"); and
2. [Name of organisation] ("The Contractor");

PURPOSE OF THE AGREEMENT

3. The HMRC agrees to second **[name]** ("**The Secondee**") to the Contractor. The Contractor shall assign the Secondee to the duties set out at Annex 1, which shall form part of this agreement.

DURATION OF THE AGREEMENT

4. The period of secondment will commence on **[date]** and subject to earlier termination of the agreement in accordance with Clauses 25-27 below, shall end on **[date]**.

TERMS AND CONDITIONS

5. The Secondee shall remain an employee of the HMRC during the period of secondment and shall retain conditions of service as an established Civil Servant. Some of these terms and conditions are set out below.
6. The HMRC shall retain all the normal duties and other legal responsibilities of an employer for the Secondee, but the Contractor shall comply with all the relevant requirements contained or having effect under the legislation relating to health, safety and welfare at work.
7. The Secondee shall continue to be covered by the provisions of the Principal Civil Service Pension Scheme.
8. The Contractor shall not approach the Secondee with an offer to take up a permanent appointment during the period of secondment nor for a period of two years thereafter.

9. The Seconded shall be based at:

[address]

10. The Seconded shall report to **[name of line manager]** at the address shown in paragraph 9 on **[date]** who shall be responsible for all aspects of the control and direction of the Seconded's work during the period of secondment. The Contractor shall bear the liability for any negligent act of the Seconded during the course of his/her work for the Contractor.
11. The Contractor shall be liable for any act of the Seconded during the course of his/her work for the Contractor which gives rise to legal liability.

The Contractor shall bear the liability for any negligent act of the Seconded during the course of *his/her work for the Contractor.

The standard flexible hours of work for the Seconded are 37/42* per week. The hours of work shall be 7.24 on each weekday with 1 hour for lunch. In the event that additional hours are required, the Contractor and the Seconded will agree the hours to be worked in accordance with terms of the Working Time Regulations. The Contractor and Seconded will agree whether payment for extra time worked or time off in lieu is made. The Contractor agrees that the Seconded must take any time off in lieu granted before the end of the period of the secondment.

FINANCIAL ARRANGEMENTS

12. For the duration of the secondment the Seconded will continue to have *his/her normal Civil Service salary paid by the HMRC. The HMRC will also pay employer's National Insurance Contribution.
13. [NB include here details of any reimbursements to be made in the terms of "The Contractor will reimburse the HMRC the full costs of salary, ERNIC and Superannuation costs as detailed in Annex 2]

EXPENSES

14. Expenses incurred by the Seconded in carrying out *his/her duties on secondment (i.e., travelling to and from a site) will be reimbursed direct to the Seconded by the Contractor at the rate at which the Contractor reimburses the expenses of the Contractor's employees. The Contractor will reimburse the Seconded for all travel and other expenses properly and reasonably incurred in the performance of his/her duties for the Contractor, and properly claimed and vouched for to the Contractor at the rate at which the Contractor reimburses the expenses of the Contractor's employees.

HOLIDAYS

15. The Seconded's leave allowance will be in accordance with the HMRC's usual terms

and subject to any amendment which may be agreed thereto in future for non-industrial Civil servants. The Seconded's annual leave entitlement at present is **[number]** working days. In addition, the Seconded is entitled to all public holidays (8 days) and 2½ privilege days.

16. Details of any time taken off by the Seconded through sickness are to be notified to **[executive office/division name and address]** by the Seconded and the Contractor and, in the event the Seconded supplies the Contractor with certification in respect of his/her absences, the HMRC shall be supplied by the Contractor with such medical or self-certificates as may be appropriate in relation to such absences without delay. The HMRC shall be responsible for the payment of any statutory sick pay as may be due.

CONDUCT, DISCIPLINE, SECURITY AND CONFIDENTIALITY

17. The Seconded will continue to be subject to the Official Secrets Acts and to the special obligation on officers of the HMRC, imposed by Section 6 Taxes Management Act 1970 and Section 182 Finance Act 1989, to safeguard the confidentiality of information held by the HMRC. The Seconded will therefore continue to conform with the Civil Service and the HMRC's rules conduct, discipline, security and confidentiality. In particular, the Seconded will need to avoid situations that may lead to conflicts of interest. The Contractor agrees to assist the Seconded and the HMRC in ensuring

that the Seconded complies with the requirements set out in this paragraph 18.

18. Subject to the above, the Seconded should conduct *him/herself as if *he/she were a member of the Contractor's company in following its company policies and directives. Commercial information acquired by the Seconded whilst on secondment will not be used for the HMRC's purposes.
19. The disciplinary rules applicable shall be those of the HMRC. The Contractor may ask the HMRC to institute the disciplinary proceedings and to take part in them where necessary.
20. The grievance procedures applicable shall be those of the HMRC. The HMRC will provide guidance to the Contractor in respect of these as required.

APPRAISAL

21. The Contractor will apply the HMRC's Performance Management System throughout the period of the secondment, including 3 in-year assessments and an end of year review on 31 March.
22. For the avoidance of doubt, the terms and conditions hereof shall be subject to the terms and conditions applicable to non-industrial Civil Servants as amended from time to time.

VARIATION

23. The terms of this agreement may only be varied by agreement in writing between persons authorised by the parties.

TERMINATION

24. This agreement may be terminated by either party giving to the other at least one month's notice in writing.
25. The HMRC may terminate this agreement with immediate effect by giving notice in writing to the Contractor in any of the following events:
- (a) if the Seconded notifies the HMRC that he/she is not prepared to continue the secondment; or
 - (b) if the Contractor is in breach of any provisions of this agreement.
26. The Contractor may terminate this agreement with immediate effect by giving notice to the HMRC and the Seconded in writing if the Seconded:
- (a) commits any act of dishonesty or any other serious breach or non observance of his obligations under this agreement;
- is unable to perform the duties and functions as laid out in the Annex for a period of 6 consecutive weeks during the period of the secondment;
- (b) fails in any material respect to perform the duties and functions;
 - (c) gives notice to terminate his employment with the HMRC; or
 - (d) If the HMRC is in breach of any provisions of this agreement.
27. Such termination shall not affect rights, which the party so terminating the agreement may have against the other in consequence of the breach by the other party.

We, the undersigned, consent to the terms of this agreement:

Authorised to sign for and on behalf of
name of Contractor

Authorised to sign for and on behalf of the
HMRC

Signed :

Signed :

Name:

Name:

Date:

Date:

SECONDMENT AGREEMENT - FORM B

SECONDMENT OF [] ("**Secondee**")
FROM
[Supplier] TO
The HMRC

This Agreement is made the day of 20[]

BETWEEN

- (1) [name of organisation];
- (2) The Commissioners of the HMRC of [address of office] ("the "**HMRC**"); and
- (3) [name] ("**the Secondee**").

WHEREAS

[name of org] employs the Secondee in its [current employment of Secondee] and is willing to second her/him to the HMRC in that capacity.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

In this Agreement, the words and expressions set out below shall have the following

meanings:

Benefits	means the benefits (excluding the Salary and expenses) to which the Seconded is entitled in accordance with his/her Employment Agreement together with such other benefits as may from time to time be agreed in writing between the parties to this Agreement;
Business Day	means a day (other than a Saturday or Sunday) on which banks in the City of London are generally open for business;
Duties and Functions	means the duties and functions to be performed and exercised by the Seconded described and set out in the Schedule to this Agreement;
Employment Agreement	means the Seconded's contract of employment with [name of org]; and
Salary	means the gross salary of the Seconded to which he/she is entitled in accordance with his/her Employment Agreement.

2. OBLIGATIONS OF [NAME OF ORG]

- 2.1 [name of org] shall, in accordance with the provisions of this Agreement, provide the services of the Seconded to act as an [] for the HMRC in its [] office.
- 2.2 [name of org] shall make the services of the Seconded available exclusively to the HMRC on a full-time basis for 37.5 hours a week throughout the duration of this Agreement as specified in Clause 6.1, subject to the right of the Seconded to take holidays pursuant to his/her Employment Agreement.
- 2.3 [name of org] shall at all times during the Secondment:
 - 2.3.1 use its best endeavours to procure that the Seconded shall perform the Duties and Functions together with such other duties as may from time to time be agreed by the [name of org] and the HMRC;
 - 2.3.2 ensure that the Seconded is able to provide his/her services exclusively to the HMRC and is not required, unless agreed by the HMRC, to perform any other services for [name of org] or any other person;
 - 2.3.3 continue to pay to the Seconded his/her Salary and Benefits in accordance with his/her Employment Agreement;
 - 2.3.4 comply with any statutes or other enactments for the time being in force

including, but not limited to, the Income Tax (Employments) Regulations 1993, Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992 in respect of the deduction of taxes and the collection of national insurance contributions levied and payable in respect of the Salary payable to the Seconded and shall account promptly to the relevant statutory authority in respect of monies so collected or deducted;

2.3.5 comply with any statutes or other enactments for the time being in force in respect of the employment of the Seconded;

2.3.6 take out and maintain full and comprehensive policies for liability insurance, professional indemnity and public liability in respect of this Secondment.

3. OBLIGATIONS OF THE SECONDEE

3.1 During the period of the Secondment, the Seconded shall:

3.1.1 perform the Duties and Functions set out in the schedule [A] to this agreement and such additional duties as may reasonably and lawfully be requested by the HMRC;

3.1.2 carry out the Duties and Functions and any additional duties diligently and in a timely and professional manner, and using all reasonable care and skill in doing so;

3.1.3 report to and be subject to the control and supervision of the HMRC's [line manager];

3.1.4 be subject to and bound by the terms and provisions contained or referred to in schedule []/[code of conduct document attached] of this Agreement and any terms contained or referred to in the Seconded's letter of appointment.

3.1.5 [DN: a further clause can be added here either to the effect that the Seconded remains subject to the appraisal system of the organisation or to the HMRC. This will depend on the individual agreement reached.]

4. OBLIGATIONS OF THE HMRC

4.1 In respect of the Seconded, the HMRC shall comply with all relevant requirements contained or having effect under the legislation relating to health, safety and welfare at work.

4.2 The HMRC shall reimburse the Seconded for all travel and other expenses properly and reasonably incurred in the performance of his/her duties for the HMRC, and properly claimed and vouched for in accordance with the HMRC's current expense

reporting procedure.

- 4.3 [DN: this section should also include details of the repayment being made (if any) to the seconding organisation.]

5. CONFIDENTIALITY

- 5.1 Each party undertakes that they shall not, save as required by law (and then only to the extent so required), at any time after execution of this Agreement (including after the termination of this Agreement) divulge any information in relation to the affairs or business or method of carrying on business of any other party to this Agreement which it knows or ought reasonably to know at the relevant time to be confidential and which it has learnt as a result of the negotiations leading up to or the operation of this Agreement.
- 5.2 The HMRC and the Seconded further agree and acknowledge that during the course of the Secondment, the Seconded will be subject to the Official Secrets Act and to the special obligations on Officers of the HMRC, imposed by Section 6 of the Taxes Management Act 1970 and Section 182 of the Finance Act 1989, to safeguard the confidentiality of information held by the HMRC and will sign any secrecy clause required.
- 5.3 **[name of org]** accepts and acknowledges that any information provided to the Seconded in the course of his/her secondment with the HMRC will not be disclosed to it.

6. DURATION AND TERMINATION

- 6.1 This Agreement shall come into effect on **[date]** and subject to the remaining provisions of this Clause 6 remain in force until **[date]**.
- 6.2 **[name of org]** may terminate this Agreement with immediate effect by giving notice to the HMRC in any of the following events:-
- 6.2.1 if the Seconded notifies **[name of org]** that he/she is not prepared to continue the secondment; or
- 6.2.2 if the HMRC is in breach of any of the provisions of this Agreement and such breach (if capable of remedy) shall continue 21 days after notice in writing specifying the breach and requiring the same to be remedied has been given.
- 6.3 The HMRC may terminate this Agreement with immediate effect by giving notice to **[name of org]** and the Seconded without any payment in lieu of notice if the Seconded:
- 6.3.1 commits any act of dishonesty or any other serious breach or non-observance of his/her obligations under this Agreement;
- 6.3.2 is unable to perform the Duties and Functions for a period of 6 consecutive weeks during the period of the Secondment;

- 6.3.3 fails, in any material respect, to perform the Duties and Functions; or
- 6.3.4 gives notice to terminate his/her Employment Agreement with **[name of org]**.
- 6.4. The HMRC may terminate this Agreement with immediate effect by giving notice to **[name of org]** and the Seconddee without any payment in lieu of notice if **[name of org]** commits any serious breach or non-observance of its obligations under this Agreement;
- 6.5 In the case of a breach of this Agreement which is capable of remedy under clauses 6.3.1 or 6.3.3 or 6.4 above, the party in breach will be given 21 days from receipt of a written notice from the HMRC specifying the breach and requiring its remedy, to rectify the breach before the Agreement is terminated with immediate effect without any further notice or payment in lieu of notice.
- 6.6 Either **[name of org]** or the HMRC may terminate this Agreement by giving two month's notice to the other.

7. LIABILITY

- 7.1 The HMRC shall be responsible for all work carried out by the Seconddee pursuant to his/her secondment and **[name of org]** shall have no liability therefore.
- 7.2 **[name of org]** agrees to indemnify and keep the HMRC indemnified on demand from and against all actions, claims, costs, liabilities and losses (including, without limitation, any costs incurred in settling, contesting or dealing with the same) which may be made against it or which it may suffer or incur as a consequence of or which relate to or arise directly or indirectly from any act or omission by **[name of org]** including, without limitation, any failure by **[name of org]** to perform its obligations in relation to the Seconddee and any liability for any act or omission of the Seconddee for which **[name of org]** remains vicariously liable notwithstanding the secondment to the HMRC.

8. RELATIONSHIP

- 8.1 The HMRC and **[name of org]** agree that the Seconddee shall at all times remain the employee of the **[name of org]** notwithstanding his/her secondment to the HMRC, and that nothing in this agreement shall be effective to constitute or render the HMRC the employer of the Seconddee.
- 8.2 Nothing herein contained shall create or constitute the relationship of employer and employee, or principal and agent, or partnership between the HMRC and **[name of org]** and further the HMRC shall not have any power right or authority to bind **[name of org]** to any obligation.

9. NOTICES

- 9.1 Any notice request or other communication required to be given under this Agreement

shall be made in writing and may be hand-delivered or sent by first class recorded delivery post to the recipient at such address within the United Kingdom as the recipient may notify to the sender in writing for this purpose, or by facsimile transmission to such number within the United Kingdom as the recipient may notify to the sender in writing for this purpose, and in all cases marked for the attention of the following respective addressees:

9.1.1 In the case of a notice given by **[name of org]** to the HMRC [individual]; and

9.1.2 In the case of a notice given by the HMRC to **[name of org]**, the Company Secretary, **[name of org]**;

9.1.3 In the case of a notice given by the HMRC to the Seconded, [name].

9.2 Notice shall be deemed to have been received:

9.2.1 if sent by post three Business Days after the date of posting;

9.2.2 if delivered by hand on the Business Day following the date of delivery; and

9.2.3 if sent by facsimile transmission on the Business Day following the date of transmission provided that the sender's apparatus has recorded the transmission as having been successfully made.

9.3 It shall be sufficient in proving service that the letter containing the notice was properly addressed and (as the case may be) put in the post or delivered.

10. WAIVER

10.1 No relaxation forbearance delay or indulgence by any party in exercising its rights under this Agreement or any granting of time by such party shall prejudice or affect its right hereunder.

10.2 No waiver of any default or breach under this Agreement or failure to enforce any rights by any party shall constitute a waiver of any subsequent or continuing default or breach.

10.3 No waiver shall be effective unless made in writing agreed and signed on behalf of the party so granting the waiver.

11. HEADINGS

11.1 The headings in this Agreement are solely for convenience and reference and shall not be taken into account in the construction interpretation or meaning of this Agreement.

12. ASSIGNMENT

- 12.1 **[name of org]** may assign any of its rights or obligations hereunder to any other company in **[name of org]**.
- 12.2 This Agreement is personal to the HMRC, who shall not without **[name of org]** prior written consent assign any of its rights or obligations hereunder, and any purported or attempted assignment by the HMRC or transfer by operation of law without such consent shall give **[name of org]** the right to terminate this Agreement with immediate effect by giving notice to the HMRC.
- 12.3 This Agreement shall be binding on the permitted assignees and successors of the parties hereto.

13. ENTIRE AGREEMENT AND AMENDMENTS

- 13.1 This Agreement (together with any documents referred to herein) supersedes any preliminary or previous correspondence negotiations arrangements or agreements between the parties in relation to the matters specifically dealt with herein, and

represents the entire understanding of the parties, in relation to the matters specifically dealt with his/herein.

- 13.2 No amendment to or alteration of this Agreement shall be effective unless made in writing agreed and signed on behalf of each of the parties hereto.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first before written

Signed by

For and on behalf of
[name of org]

Signed by

For and on behalf of
[HMRC]

Signed by

[Seconded]



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (December 2020)

SCHEDULE 9.2 | Key Personnel

Schedule 9.2 | Key Personnel

As at the date of this Agreement the Parties are agreed that there are no Key Personnel that need to be recorded here and included as Key Personnel because of their role or responsibilities.

If the Parties wish to add Key Personnel at a later date either prior to or after the Effective Date they may do so by Agreement or via Schedule 8.3 Change Control Procedure.

[Redacted]



HM Revenue
& Customs

HMRC Tier 1 and 2 Model ICT Contract

Version 2.3 (December 2020)

SCHEDULE 11 | Collaboration Agreement

Collaboration Agreement

1. DEFINITIONS

1.1 In this Schedule 11, the following definitions shall apply:

“Customer Business Objectives”	has the meaning given in Section 2 (Introduction) of this Schedule 11
“Other Supplier”	any other third party which supplies services to the Customer; and
“Required Behaviours”	means the behaviours set out in Exhibit EXHIBIT 11-1 to Annex ANNEX 11-1 (Required Behaviours) to this Schedule 11.

2. INTRODUCTION

2.1 This Schedule 11 sets out the objective of the Customer that its suppliers (including the Supplier) should work cooperatively and collaboratively with each other and with the Customer to achieve the following objectives:

- (a) good HMRC user experience (internal and external);
- (b) pace and flexibility in service delivery; and
- (c) security and resilience,

(**“Customer Business Objectives”**).

2.2 Unless otherwise expressly stated, the Customer Business Objectives set out in Section 2.1 and the contents of this Schedule 11 are not contractually binding, and do not amend the meaning or intent of this Agreement. Instead, they are intended to provide a general set of principles for the spirit of the engagement of the Parties with each other, and with Other Suppliers and relevant third parties.

3. NOTIFICATION OF FAILURE

3.1 The Parties shall, at all times, act in accordance with the principle of “fix first, settle later”, requiring that each Party shall concentrate on solving a problem as expeditiously and cost effectively as possible and leave any Disputes as to which Party or Other Supplier (if any) is responsible, which Party or Other Supplier (if any) should bear the cost of fixing the problem and any associated legal issues until resolution of the relevant problem.

- 3.2 Where the Supplier fails or becomes aware that it is likely to fail to comply with any obligation under this Agreement and that failure could impact on the performance of inter-related services by any Other Supplier(s) or the Customer, the Supplier shall as soon as is reasonably practicable communicate to the Customer such failure or likely failure.
- 3.3 Where the Supplier becomes aware of an event or incident that that could impact on the performance of its own Services or the performance of the services by any Other Supplier(s) or the Customer, the Supplier shall as soon as is reasonably practicable communicate to the Customer such failure or likely failure.
4. **COLLABORATION AND REQUIRED BEHAVIOURS**
- 4.1 In performing any Fujitsu Project Services, the Supplier shall comply with this Section 4 and the provisions of Annex 11-1 (Required Behaviours) to this Schedule 11. In the case of such Fujitsu Project Services, the Supplier should also work cooperatively and collaboratively with the Customer and Other Suppliers with the objective of achieving value for money.
- 4.2 The Supplier shall work collaboratively with the Customer and Other Suppliers of inter-related services to deliver the Supplier's applicable Services towards the successful end to end transition and implementation of all services procured by the Customer, and steady state running of those services.
- 4.3 As a consequence, the Supplier shall co-operate with the Other Suppliers:
- (a) in the orderly provision of seamless end to end services;
 - (b) to avoid hindering provision of services by any other suppliers;
 - (c) where appropriate to facilitate the successful delivery of services by other suppliers;
 - (d) to avoid unnecessary duplication of effort;
 - (e) to avoid unnecessary disturbance to the Customer and other suppliers;
 - (f) to do what is reasonably necessary to integrate systems and the services provided under this Agreement with other relevant systems and services;
 - (g) to assist integration and interfacing where the applicable Services provided under this Agreement or other services are subject to inter-party dependencies; and
 - (h) in respect of Fujitsu Project Services, to achieve value for money solutions for the Customer.
- 4.4 The Supplier shall not unreasonably seek to blame Other Suppliers for service failures but support Other Suppliers in the resolution of incidents and problems relating to the delivery of the applicable Services.

5. **GOVERNANCE**

- 5.1 In addition to those meetings specified in Schedule 8.1 (Governance) and in the remaining provisions of this Agreement, the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf, such other meetings relevant to the Supplier and/or the Services which may be held with Other Suppliers and/or other third parties that the Customer may reasonably request from time to time.

ANNEX 11-1 REQUIRED BEHAVIOURS

1. DEFINITIONS

1.1 In this Annex 11-1, the following definitions shall apply:

“Service Provider”	the Supplier, all other suppliers and the Customer and Services Recipients; and
“Service Provider Personnel”	all directors, officers, employees, agents, consultants and contractors of the Service Providers.

2. REVIEW OF PERFORMANCE AGAINST THE REQUIRED BEHAVIOURS

2.1 Following the commencement of any Fujitsu Project Services, the Supplier shall ensure that an appropriate representative attends, on the Supplier’s behalf, such meetings that the Customer may request from time to time to review the Parties’ respective performance against the Required Behaviours.

2.2 Subject to Section 2.4 of this Annex 11-1, any persistent instances of the Supplier not demonstrating the Required Behaviours will be recorded and may result in the following actions being taken:

- (a) the Customer may require that the Supplier attend an exceptional meeting (the **“Supplier Review Meeting”**) to be convened by serving not less than five (5) Working Days’ notice; and
- (b) at the Supplier Review Meeting, the Supplier will be required to detail the actions it will take to prevent further failures to demonstrate the Required Behaviours and, in the event that:
 - (i) the actions proposed by the Supplier fail to remedy the breach of Required Behaviours within thirty (30) Working Days of such Supplier Review Meeting; or
 - (i) the Customer reasonably believes that such actions will not or are unlikely to remedy the failure to demonstrate the Required Behaviours or that the timescales for delivering such actions are inappropriate,

the Customer may require the Supplier to provide to the Customer for approval a formal rectification plan, to address the impact of and prevent the reoccurrence of a the failure, as soon as is reasonably practicable and, in any event, within five (5) Working Days from the date of the Customer’s request.

2.3 The Supplier shall carry out the approved rectification plan submitted under Section 2.1 of Annex 11-1 in accordance with its terms, and shall report the status of the remedial efforts being undertaken to the Customer on a regular basis, and in any event

no less than once per week, until the Customer is satisfied that the breach of the Required Behaviours has been remedied.

2.4 The Parties acknowledge and agree that a failure to perform in accordance with any of the Required Behaviours shall not in itself constitute a breach of that Party's obligations under this Agreement but shall, in the case of persistent instances of non-compliance, entitle the Customer to require the performance of the actions set out in Sections 2.1 and 2.3 above.

2.5 If a failure of the Supplier to demonstrate the Required Behaviours is:

(a) also a Default of another obligation under this Agreement; and/or

(b) disputed by the Supplier,

then such Default and/or dispute may be resolved in accordance with Clause 31 of the Terms and Conditions, and if such Default and / or dispute is being resolved in accordance with Clause 47 of the Terms and Conditions, then Clause 47 of the Terms and Conditions shall apply in replacement of the actions set out in Section 2.1 of this Annex 11-1.

EXHIBIT 11-1 REQUIRED BEHAVIOURS

1. TAKING RESPONSIBILITY

- 1.1 Each Party shall improve its working relationships with the other and with the other Service Providers taking responsibility to fulfil collaboratively agreed commitments to support the delivery of the Customer Business Objectives (as notified to the Supplier from time to time) through leadership, awareness, information exchange and joint problem solving.
- 1.2 The Parties shall demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment, in particular by establishing a strong direction and a persuasive future vision for collaboration.
- 1.3 The Supplier shall seek to understand the Customer's objectives and goals in relation to the end to end services in order to support and improve the Parties' collaborative relationships and behaviours.
- 1.4 The Parties shall be open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of the Customer's objectives.
- 1.5 The Parties shall demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later".

2. CONSISTENCY AND CONVERGENCE

- 2.1 Each Party acknowledges that adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with other Service Providers will support the successful delivery of the Services.
- 2.2 Where necessary and in accordance with this Agreement the Supplier shall adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services, including by:
 - (a) where appropriate, adopting such standard terminology as is used already by the Customer and its other Service Providers;
 - (b) using recognised industry standard terminology wherever appropriate (and outside VME and MVE), in preference to terminology that describes the Supplier's own products, services, tools and processes;
 - (c) working with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services; and

- (d) demonstrating an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improve value, using consistent end to end service delivery processes.

2.3 The Parties shall work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements.

2.4 The Supplier shall demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than “re-inventing wheels” in order to facilitate the efficient and effective delivery of the Customer’s objectives.

3. **OPENNESS AND COMMUNICATION**

3.1 The Parties shall provide cooperation, support, information and assistance to each other and to other relevant Service Providers in a proactive, transparent and open way and in a spirit of trust and mutual confidence, to achieve the Customer Business Objectives.

3.2 The Parties shall act as “one team” with each other and with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver the Customer’s objectives (as notified to the Supplier from time to time), including by:

- (a) maintaining a genuine, non defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that arise;
- (b) engaging in regular and open communication with each other and with the other Service Provider and with other the Customer’s delivery groups and avoiding working in “silos”;
- (c) demonstrating a willingness and ability to:
 - (i) listen to other parties’ concerns and consider in good faith all constructive feedback without triggering unnecessary escalation; and
 - (ii) provide constructive feedback to other Service Providers where appropriate; and
- (d) behaving in a supportive and considerate manner to each other and all Service Provider Personnel, regardless of organisation.

3.3 The Parties shall identify and adopt appropriate types and styles of communications, behaviours and engagement activities. This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote the Customer’s objectives (as notified to the Supplier from time to time).

- 3.4 The Parties shall promptly and proactively:
- (a) identify factors which may compromise or enhance the solution or performance;
 - (b) analyse the impact and likelihood of such factors;
 - (c) escalate and mitigate emerging risks; and
 - (d) exploit opportunities to enhance the solution or performance.

4. **DELIVERY AND INNOVATION**

- 4.1 Each Party shall individually and collectively and with the other Service Providers work to deliver the Customer Business Objectives (as notified to the Supplier from time to time) and achieve value and ensure the orderly provision of seamless end to end services.
- 4.2 The Parties shall encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle.
- 4.3 The Supplier shall demonstrate a drive to continually strive to deliver in order to support the Customer to achieve its ambition to become the most digitally advanced tax authority in the world.
- 4.4 The Parties shall act responsively to change and shall proactively identify situations where change may be appropriate and empower staff to consider and jointly take managed risks as appropriate.
- 4.5 Each Party shall recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition.