

# Contract for the Provision of Air Charter Services

- (1) The Secretary of State for Health and Social Care  
(2) Kuehne + Nagel Limited

Dated 29 October 2021



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**THIS AGREEMENT** is made on

29 October

2021

**BETWEEN:**

- (1) **The Secretary of State for Health and Social Care** of 39 Victoria St, Westminster, London SW1H 0EU acting as part of the Crown (the “**Authority**”); and
- (2) **Kuehne + Nagel Limited** a company registered in England and Wales under company number 01722216 whose registered office is at 1 Roundwood Avenue, Stockley Park Uxbridge, England UB11 1FG (the “**Freight Manager**”)

(each a “**Party**” and together the “**Parties**”).

**INTRODUCTION**

- (A) The Authority has sourced substantial quantities of Personal Protection Equipment (PPE), testing equipment, medical devices and healthcare supplies from producers globally. There is an ongoing requirement for the Authority to arrange for the movement of this equipment and these devices and supplies from various factories and storage facilities in order to meet continued demand driven by the response to COVID-19 across the world.
- (B) To enable the movement of goods including, but not limited to, PPE, test kits, medical devices and healthcare supplies from factories and storage facilities around the world to other locations around the world, wherever they are needed, the Authority needs to contract international freight service providers for the provision of freight forwarding and management services.
- (C) On 27 May 2021 the Authority advertised on the Find a Tender service (reference 2021/S 000-011826), inviting prospective Freight Managers to submit proposals for the provision of freight forwarding and management services.
- (D) The Freight Manager is a leading provider of international air charter services and has experience in international air chartering and air freight management.
- (E) On the basis of the Freight Manager's response to the advertisement and a subsequent tender process, the Authority selected the Freight Manager as its preferred Freight Manager.

**IT IS AGREED** as follows:

**1 Definitions and Interpretation**

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

- 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.5 any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):
  - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("EEA") agreement ("EU References") 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
  - (b) 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;
- 1.2.6 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.7 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.9 unless otherwise provided references to Clauses and Schedules are references to the clauses and schedules of this Agreement and 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; and
- 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.

## **2 Due Diligence Information**

- 2.1 The Freight Manager acknowledges that:
  - 2.1.1 the Authority has delivered or made available to the Freight Manager all of the information and documents that the Freight Manager considers necessary or relevant for the performance of its obligations under this Agreement;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has raised all relevant due diligence questions with the Authority before the Effective Date;
  - 2.1.4 it has undertaken all necessary due diligence and has entered into this Agreement in reliance on its own due diligence alone;
  - 2.1.5 it shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Freight Manager be entitled to recover any additional costs or charges, arising as a result of any:

- (a) misinterpretation of the requirements of the Authority in this Agreement;
  - (b) failure by the Freight Manager to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
  - (c) failure by the Freight Manager to undertake its own due diligence; and
- 2.1.6 Nothing in this Agreement, nor the Tender, confers any guarantee of, or commitment to particular volumes of Services to be purchased by the Authority from the Freight Manager under this Agreement.

### **3 Order of Precedence**

- 3.1 Subject to Clause 3.2, in the event of any conflict between any parts of this Agreement the order of precedence shall be:
- 3.1.1 these front-end terms of this Agreement;
  - 3.1.2 the Schedules to this Agreement; and
  - 3.1.3 the Tender.
- 3.2 Where the Tender contains provisions which are more favourable to the Authority in relation to (the rest of) this Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.
- 3.3 If there is a conflict between the terms of this Agreement and the terms and conditions on any bill of lading, air waybill or other shipping documentation, the terms of this Agreement shall prevail as between the Freight Manager and the Authority, to the extent not in conflict with the compulsory rules relating to the international carriage of goods established by the relevant conventions referred to in Clause 23.2.3.

### **4 Representations and Warranties**

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

- 4.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Agreement;
- 4.2.3 its execution, delivery and performance of its obligations under this Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 4.2.4 it is skilled in the Services and that the Services shall:
- (a) conform with the requirements, and be provided in accordance with the terms of any SOP Manual;
  - (b) be rendered with due care and skill and at all times in accordance with Good Industry Practice; and
  - (c) be provided in accordance with the Key Performance Indicators;
- 4.2.5 as at the Effective Date, all written statements and representations in any written submissions made by the Freight Manager as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
- 4.2.6 if the Charges payable under this Agreement exceed or are likely to exceed five million pounds (£5,000,000), as at the Effective Date it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor 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 Contractor 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.
- 4.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, (held in electronic form). software owned by or under the control of, or used by, the Authority or the Authority's Confidential Information;
- 4.2.8 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;
- 4.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Freight Manager 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 Freight Managers assets or revenue;

4.2.10 for the Term and for a period of twelve (12) Months after the termination or expiry of this Agreement, the Freight Manager shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without approval or the prior written consent of the Authority which shall not be unreasonably withheld; and

4.2.11 the IT Systems and any configuration of the same by the Freight Manager are free from defect, suitable for purpose, free from viruses and comply with all specifications herein.

4.3 Each of the representations and warranties set out in Clauses 4.1 and 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, Agreement.

4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 4.1 and 4.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

4.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Freight Manager which constitutes a material Default.

## **5 Guarantee**

5.1 Where the Authority requires a Guarantee from the Freight Manager, then, on or prior to the Effective Date or on any other date specified by the Authority, the Freight Manager shall deliver to the Authority:

5.1.1 an executed Guarantee from a Guarantor; and

5.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

5.2 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in Clause 5.1 by giving the Freight Manager notice in writing.

## **6 Commencement and Term**

6.1 This Agreement shall commence on the Effective Date and, subject to any earlier termination, continue in force for a period of [REDACTED] from the Operational Commencement Date ("Initial Term").

6.2 The Authority shall be entitled to extend the Term beyond the expiry of the Initial Term ("Extended Term") on more than one occasion, for an additional period of three [REDACTED] in each case, subject always to a maximum total Extended Term of [REDACTED].

6.3 If the Authority wishes to exercise its right under Clause 6.2, no later than three (3) Months prior to the expiry of the Initial Term or the relevant Extended Term the Authority will notify the Freight Manager in writing of any extension to the Agreement, specifying the period of the Extended Term. In such case the Agreement shall continue in force for such Extended Term.

## **7 Forecasting & Order Confirmation**

7.1 The Authority shall provide written rolling forecasts of its freight requirements to the Freight Manager each Month for the following twelve (12) Months detailing:



- 7.1.1 the estimated volume required (in cubic metres) each week;
  - 7.1.2 details of the points of origin and final destination for the Goods; and
  - 7.1.3 any special requirements for handling or transportation of such Goods.
- 7.2 In addition to the twelve (12) Month rolling forecast referred to in Clause 7.1, the Authority shall within the first fourteen (14) days of each Month notify the Freight Manager in writing of its air freight requirements in the following Month, giving details of:
- (a) the total volume required;
  - (b) the final dates required for delivery of the Goods;
  - (c) confirmation of the airport of origin; and
  - (d) the country and final destination for delivery,
- whereupon the parties will follow the procedure set out in Clause 19.2 for the approval and reservation of the required volume of air freight space necessary to fulfil the Authority's requirements.
- 7.3 From time to time through the duration of this Agreement, the Authority shall send a written Instruction to the Freight Manager (and all other relevant agents, subcontractors and representatives of the Authority) placing a written order for collection and delivery of the Goods to be transported confirming:
- 7.3.1 the supplier or warehouse address for the Goods;
  - 7.3.2 a description of the Goods to be transported;
  - 7.3.3 the quantity of Goods to be transported;
  - 7.3.4 the country of the final destination for delivery of the Goods;
  - 7.3.5 (where known, or if not known at the time of the Instruction, the Authority will ensure it provides during transit of the Goods) the address for the final destination for delivery of the Goods;
  - 7.3.6 the final date for delivery; and
  - 7.3.7 any other information relevant to the transport and packaging of the Goods (if any).
- 7.4 The Authority acknowledges that where it subsequently withdraws its requirements for freight that are booked following the approval of the Authority in accordance with Clause 19.2 it will be liable to the Freight Manager for the reasonable cancellation charges of freight space reserved by the Freight Manager to fulfil the Authority's estimated freight requirements set out in the updated forecast provided by the Authority under this Clause, on the conditions that:
- 7.4.1 such reasonable cancellation charges have been notified to the Authority in writing in advance; and
  - 7.4.2 the Freight Manager has first used reasonable endeavours to minimise the costs of any such cancellation or to avoid cancellation by utilising the freight space to fulfil alternative freight requirements either of the Authority or of a third party and where applicable charging the costs of the freight to that third party.

## **8 Provision of Services**

- 8.1 The Freight Manager acknowledges and agrees that the Authority relies on the skill and judgment of the Freight Manager in the provision of the Services and the performance of its obligations under this Agreement.
- 8.2 During the Term, the Freight Manager shall ensure that the Services:
  - 8.2.1 comply in all respects with the description of the Services as set out in Schedule 2 (Services) or elsewhere in this Agreement; and
  - 8.2.2 are supplied in accordance with the provisions of this Agreement and the Tender.
- 8.3 The Freight Manager shall, and shall ensure that the Freight Manager Personnel shall, provide the Services and otherwise perform its obligations under this Agreement:
  - 8.3.1 in accordance with the timescales set out in this Agreement and in all other cases, if not specifically set out elsewhere, promptly;
  - 8.3.2 in accordance with any SOP Manual;
  - 8.3.3 so as to achieve or exceed the KPI Minimum Targets for each Key Performance Indicator;
  - 8.3.4 so as not to infringe or cause the Authority to infringe any third party's Intellectual Property Rights;
  - 8.3.5 in a manner which complies with, and enables the Authority to comply with, and such that the Services shall conform to, all applicable Laws, including Laws relating to the packaging, marking, storage, handling, product safety and delivery of the Goods;
  - 8.3.6 in co-ordination and cooperation with the Authority and all third party suppliers to the Authority (including, for the avoidance of doubt, the suppliers of the Goods); and
  - 8.3.7 in accordance with Schedule 5 (Governance).
- 8.4 The Freight Manager shall:
  - 8.4.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Agreement;
  - 8.4.2 give priority in shipping to any Goods expressly identified by the Authority as being urgently required;
  - 8.4.3 obtain all documents, licences, permissions, authorisations, consents and permits needed to supply, and for the Authority to enjoy, the Services in accordance with the terms of this Agreement;
  - 8.4.4 minimise any disruption to the Authority's operations when providing the Services;
  - 8.4.5 ensure that any documentation and training provided by the Freight Manager to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - 8.4.6 assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of the Services. Where any such warranties are held on trust, the Freight Manager shall

- enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Freight Manager;
- 8.4.7 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 8.4.8 deliver the Services in a proportionate and efficient manner;
- 8.4.9 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 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 Freight Manager's obligations under this Agreement;
- 8.4.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Freight Managers compliance with its obligations under this Agreement; and
- 8.4.11 ensure that it will have available to it throughout the Term, and will employ in the provision of the Services at no additional cost to the Authority (save where such cost has been agreed in writing to be shared by the parties), all stocks of consumables, equipment, manpower, Intellectual Property Rights and other things required for the provision of the Services in all respects.
- 8.5 The Freight Manager shall ensure that the Freight Manager Personnel complete all necessary forms, proof of delivery documentation and any other documents required by the Authority or any other recipient of the Goods. The Freight Manager will collect such documents as instructed by the Authority or otherwise set out in the SOP Manual.
- 8.6 It is acknowledged and agreed that the Services to be provided by the Freight Manager shall incorporate the management of the Services, and any other services carried out for the Authority, such management to include:
- 8.6.1 the prioritisation and handling of tasks and resources having regard to the Authority's operational requirements;
- 8.6.2 the identification, reporting and resolution of those parts of the Services which are subject to persistent problems or failures;
- 8.6.3 the procurement and provision of the Services such that those Services are provided in the most efficient and cost effective manner;
- 8.6.4 the due performance of the administration relating to the Services to be undertaken in accordance with, inter alia, the Authority's reasonable instructions and all statutory, regulatory and local requirements (including, for the avoidance of doubt, the identification and acquisition of such licences, consents and approvals as are necessary from all relevant third party bodies or persons of competent authority); and
- 8.6.5 use of the information and data made available to it by or on behalf of the Authority in order to reduce the costs and resources employed by the Authority in handling and effecting delivery of the Goods.
- 8.7 An obligation on the Freight Manager to do, or to refrain from doing, any act or thing shall include an obligation upon the Freight Manager to procure that all Sub-Contractors and Freight Manager Personnel also do, or refrain from doing, such act or thing.
- 8.8 If any incidental services, functions or responsibilities not specifically described in this Agreement as being within the scope of the Freight Manager's responsibilities are reasonably required and strictly necessary for the proper performance and provision of the Services, or

which an internal business unit serving an entity similar in size and type as the Authority would reasonably be expected to carry out from time to time as an integral part of its function in relation to such Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement. For the avoidance of doubt, the Freight Manager shall not be entitled to any additional Charges in respect of the performance of any such incidental services, functions or responsibilities.

## **9 Freight Management Services**

### **9.1 The Freight Manager shall:**

- 9.1.1 ensure all bookings for the Goods are made with the relevant carriers against the contracts for purchase of those Goods made by the Authority with suppliers of those Goods;
- 9.1.2 co-ordinate, liaise and maintain co-operation with the Authority, suppliers of the Goods, hauliers, carriers, freight providers and all third parties involved in the supply chain for the Goods so as to ensure timely and effective delivery of the Goods; and
- 9.1.3 without prejudice to Clause 9.1.2, co-ordinate with all third parties involved in the supply chain for the Goods in respect of any special requirements or conditions for carriage of those Goods, including temperature controls and/or handling requirements.

### **9.2 The Freight Manager shall give priority in shipping to any Goods expressly identified by the Authority as being urgently required. If, owing to the negligent or other omission of the Freight Manager such urgently-required Goods are not shipped at the required time so that, in the Authority's reasonable opinion, the required time of delivery cannot be met, the Freight Manager shall either:**

- 9.2.1 make alternative arrangements for a charter in order to meet the required delivery time, at the Freight Manager's cost;
- 9.2.2 agree to a revised required delivery time with the Authority or agree to an alternative charter; or
- 9.2.3 in the absence of any agreement in accordance with Clause 9.2.2, and at the Authority's election, pay to the Authority all reasonable costs the Authority incurs in making alternative arrangements for charter so as to meet the required delivery time, including but not limited to additional freight costs.

The Authority and the Freight Manager shall agree a procedure with the carrier to ensure visibility of the location at all times of all such urgently-required Goods.

## **10 Air Charter Services**

### **10.1 The Freight Manager shall procure Charter Flights so as to meet the Authority's air freight requirements for transportation of the Goods by air (as such requirements are notified to the Freight Manager in advance in accordance with the terms of this Agreement).**

### **10.2 The Authority acknowledges that:**

- 10.2.1 the Freight Manager's responsibility under this Agreement shall be to arrange, but not itself perform, transportation of the Goods by air as agent on behalf of the Authority so as to meet the Authority's air freight requirements (as the same are notified to the Freight Manager in accordance with Clause 7 and as required by Schedule 2 (Services) (in particular but not limited to the approval of indirect routes in accordance with Schedule 2 (Services)));

- 10.2.2 for the purposes of this Agreement, the Freight Manager is not the operator of the Aircraft and acts as an intermediary between the Authority and the relevant Carrier in connection with the provision of the Aircraft for any Charter Flight; and
  - 10.2.3 the Freight Manager is not and does not act as a common carrier or other carrier in respect of this Agreement.
  - 10.3 The Freight Manager shall procure that a Carrier provides the Aircraft at the commencement of each Charter Flight properly manned and equipped in accordance with the Law of the state of registration of the Aircraft and the Aircraft shall be operated in accordance with all applicable Law during the period of the Charter Flight(s).
  - 10.4 The Freight Manager warrants that it has entered into, or will enter into, bilateral written contracts with each Carrier it engages on behalf of the Authority in the performance of this Agreement. The transportation of the Goods by air provided pursuant to this Agreement shall be subject to the conditions of carriage contained in such contracts. The Freight Manager further warrants that those contracts comply with all applicable Law and shall be on terms similar and in any event no less onerous in all material respects than those to which it is subject under this Agreement including (but not be limited to) the following terms:
    - 10.4.1 the Carrier shall act throughout the duration of the contract in accordance with all applicable Law relating to the provision of its services;
    - 10.4.2 the Carrier's liability for loss or damage shall be determined by the Conventions and any exclusions in the Carrier's insurance coverage shall not remove or restrict the Carrier's liability in this respect. No additional limitation of the Carrier's liability may apply, unless the Freight Manager first obtains the express written consent of the Authority;
    - 10.4.3 the Carrier shall agree to maintain at all times during the term of the contract, sufficient insurance with an insurer of repute to cover its potential liability under the contract (including liability for loss or damage to the Goods); and
    - 10.4.4 the Freight Manager and Carrier agree that the Freight Manager is the party responsible for payment of the Carrier's charges.
  - 10.5 The Freight Manager shall provide copies of all contracts that it enters into in with Carriers on behalf of the Authority in performing the Services together with any ancillary documents and other documentation and records relating to such contracts.
  - 10.6 The Freight Manager shall be entitled to recover from the Authority (subject to Clause 18.1.4) all reasonable cancellation fees, demurrage and any other additional costs validly raised by the Carrier pursuant to its contract with the Freight Manager, as well as the costs of other Sub-Contractors affected, where a Charter Flight duly booked by the Freight Manager is cancelled or delayed owing solely to the acts, omissions or delays on the part of the Authority, its agents or sub-contractors and the Authority shall pay such fees, costs and charges in accordance with the provisions of Schedule 4 (Charges, Payment and Invoicing) provided that the Freight Manager:
    - 10.6.1 obtains the express written approval of any such fees, costs and charges prior to booking the Charter Flight; and
    - 10.6.2 uses all reasonable endeavours to mitigate such fees, costs and charges.
- For the avoidance of doubt, cancellation fees, demurrage and additional costs incurred by the Freight Manager owing to its failure or default shall be borne by the Freight Manager.
- 10.7 Without prejudice to any other right or remedy available to the Authority, in the event that:

- 10.7.1 the contract between the Carrier and the Freight Manager in respect of the Aircraft is terminated for any reason whatsoever (subject to Clause 10.8); or
- 10.7.2 the Aircraft is unavailable, unserviceable or detained (whether lawfully or not) by any third party (including but not limited to detention by any aviation or airport authority, overflight authority or by way of lien or requisition for hire or otherwise); or
- 10.7.3 the Carrier suffers a Carrier Insolvency Event in respect of a part or all of its business (or any analogous event occurs in any jurisdiction in which the carrier conducts its business) and as a result the carrier is unable to provide the Charter Flight(s) for the agreed costs; or
- 10.7.4 the Carrier ceases to hold or maintain an Air Operator's Certificate,

then the Freight Manager shall use all reasonable endeavours to find an alternative Carrier at no additional cost to the Authority and in the event that the Freight Manager is unable to find an alternative Carrier, the Freight Manager shall refund to the Authority any part of the Charges previously paid by the Authority in respect of such Charter Flights.

- 10.8 Where termination of the contract between the Freight Manager and the Carrier occurs owing to the Freight Manager being at fault, the Freight Manager shall bear all costs incurred by the Authority arising as a direct result, including any additional storage or demurrage costs or cancellation fees incurred by the Authority.
- 10.9 The captain of the Aircraft shall have absolute discretion to take decisions concerning the safe operation of the Aircraft including, but not limited to, matters concerning the load carried and its distribution, whether or not a Charter Flight shall be undertaken or abandoned once undertaken, any deviation from the proposed route and where and when landings shall be made, and the Authority shall accept any decision of the captain as final and binding. The Freight Manager shall inform the Authority as soon as is reasonably practicable of any such decision of the captain which adversely affects the performance of any Charter Flight with details of the reasons underlying such decision and in the event that any of the decisions made by the captain result in additional costs incurred such costs shall be payable by the Authority to the Freight Manager in accordance with the provisions of Schedule 4 (Charges, Payment and Invoicing).
- 10.10 To the extent to which the Services constitute international carriage, the rules and limitations established by the Conventions shall apply to each Charter Flight insofar as such rules are applicable.
- 10.11 Except as otherwise provided in this Agreement or as required by the Conventions, the Freight Manager shall not be liable to the Authority for damages sustained in the event of the death of or injury to any person or in the event of the destruction or loss of or damage to any property. Nothing in this clause seeks to limit or exclude liability for death or personal injury caused by the Freight Manager's negligence.
- 10.12 The Freight Manager shall ensure compliance with the terms of the contract for carriage of the Goods with the Carrier as well as the conditions of all licences and authorities granted for the Charter Flights as such terms and conditions are notified by the Carrier to the Freight Manager, who shall notify the Authority and any other relevant consignor, agent or subcontractor of such terms and conditions, providing all necessary information in advance so that the Authority, its agents, subcontractors and consignors are aware of all such terms and conditions that need to be followed.
- 10.13 The Parties acknowledge and agree that the Freight Manager is not itself a carrier and shall not be held liable for loss, damage or delay in the transportation of the Goods unless caused by the Freight Manager's negligence or breach of its obligations under this Agreement. The Freight Manager shall provide the Authority with reasonable assistance in the pursuit of any

claims the Authority may have against the relevant carrier for loss, damage or delay in the transportation of the Goods upon receipt from the Authority of the information and documentation relating to such a claim.

## **11 Authority's Obligations**

11.1 The Authority shall take all reasonable steps to:

- 11.1.1 ensure that the Goods forming the subject of a shipment are available and ready for loading onto the Aircraft in accordance with the operating instructions of the Carrier at the place and the time and date specified by the Carrier and that such Goods are collected from the destination airport or place of collection specified by the Carrier (as such operating instructions are notified to the Authority, its agents and sub-contractors by the Freight Manager) so as to meet the Authority's transportation requirements for the Goods set out in an Instruction;
- 11.1.2 ensure that the Goods forming the subject of a shipment are properly packaged and appropriately packed for carriage by air, safe handling and protection from all weather conditions to which such Goods may be exposed;
- 11.1.3 comply and procure compliance on the part of all its agents or sub-contractors involved in the handling and transportation of the Goods with all applicable Law, sanctions, embargos, customs, security and other government requirements of any country to, from or over which the Goods may be carried including those relating to the packaging, carriage or delivery of the Goods and shall, whenever required, furnish such information and deliver such documents as may be necessary to comply with such laws and regulations; and
- 11.1.4 ensure the issue and delivery on its behalf by its agents and sub-contractors of all air waybills and shipping documentation required by the Carrier and all relevant border and enforcement agencies. In addition, the Authority shall procure the provision on its behalf by its agents and sub-contractors, upon request by the Freight Manager (which shall be made direct to the Authority's agents and subcontractors) and prior to the Charter Flight, of a written declaration with a complete and accurate description of the Goods to be transported, including the value of the Goods (as declared), the weight of the Goods and any other information which the Freight Manager may reasonably request. The air waybill shall be deemed to be an air waybill within the meaning of the Conventions.

11.2 The Freight Manager shall be under no liability to the Authority for any loss or expense to the extent that such loss or expenses arises as a result of the Authority's failure to comply with its obligations under this Clause 11.

## **12 IT System**

- 12.1 The Freight Manager shall be responsible for the procurement, licensing, installation, implementation, development, configuration, hosting and maintenance of the IT Systems.
- 12.2 The Freight Manager shall ensure that the IT Systems meet ISO2700 standards, any policies notified to the Freight Manager by the Authority from time to time relevant to the storage or processing of any data belonging to the Authority, and in any event offers security in accordance with Good Industry Practice.
- 12.3 Without prejudice to the remainder of this Clause 12, where the Freight Manager uses the IT Systems in the recording of the movement of Goods it shall ensure that all such records are accurate, up to date, and complete.
- 12.4 Subject to Clause 12.5, the Freight Manager shall use the Authority's Global Trade Management Platform (or such other form of reporting as the Authority may reasonably

require) to record, and provide visibility to the Authority in respect of, the Freight Manager's provision of the Services.

- 12.5 The Authority shall use all reasonable endeavours to procure the right for to the Freight Manager to use the Global Trade Management Platform during the Term solely for the purpose of providing the service to the Authority under this Agreement and the Freight Manager shall comply with any such sub-licence terms that are agreed between the Authority and the licensor of the Global Trade Management Platform.
- 12.6 In the event that the Authority procures a licence pursuant to Clause 12.5 for the Freight Manager to access the Global Trade Management Platform the Freight Manager shall indemnify and keeps indemnified the Authority on demand from and against all and any losses, cost or expenses (including management costs and professional fees) whatsoever arising out of or in connection with any liability arising in respect of the Freight Manager's use of the Global Trade Management Platform and software licenced to the Freight Manager by the Authority.

### **13 Handling and responsibility for Goods**

- 13.1 As between the Authority and the Freight Manager, all Goods:
  - 13.1.1 will be and will remain the exclusive property of the Authority at all times, or where applicable (with reference to the terms of purchase between the Authority and the supplier of those Goods) the property of the supplier of such Goods. Title to or ownership of the Goods does not pass to the Freight Manager under this Agreement;
  - 13.1.2 the Freight Manager will assert no interest in the Goods at any time;
  - 13.1.3 the Freight Manager waives, and agrees not to assert, nor take any action to claim or perfect, any lien, charge or other encumbrance on any such Goods or any portion thereof; and
  - 13.1.4 to the extent that the Freight Manager engages Sub-Contractors or agents in connection with the Services, it will use all reasonable endeavours to ensure that such Sub-Contractors are also prevented from claiming or perfecting liens against the Goods.
- 13.2 Without prejudice to Clause 13.1, the Freight Manager shall not acquire any contractual, statutory or common law lien over the Goods or any other property belonging to or in the possession of the Authority.
- 13.3 All plant, materials, apparatus and tools used or provided by the Freight Manager for the provision of the Services or part thereof shall at all times be at the sole risk of the Freight Manager.
- 13.4 Where the Authority provides any equipment to the Freight Manager for the provision of the Services, the Freight Manager shall accept risk in such equipment and shall indemnify the Authority against any loss of or damage to that equipment whilst it is in the Freight Manager's possession.

### **14 Continuous Improvement**

- 14.1 The Freight Manager shall have an ongoing obligation throughout the Term to identify new or potential improvements to the provision of the Services in accordance with this Clause 14 with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. As part of this obligation the Freight Manager shall identify and report to the Authority at each Quarterly Management Meeting (as defined in Schedule 5 (Governance)):



- 14.1.1 the emergence of new and evolving relevant technologies which could improve the provision of the Services, and those technological advances potentially available to the Freight Manager and the Authority which the Parties may wish to adopt;
  - 14.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Authority support, equipment and/or services in relation to the Services;
  - 14.1.3 changes in business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
  - 14.1.4 changes to ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
- 14.2 The Freight Manager shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Freight Manager shall provide any further information that the Authority requests.
- 14.3 If the Authority wishes to incorporate any improvement identified by the Freight Manager, the Authority shall request a Variation in accordance with Clause 17 and the Freight Manager shall implement such Variation at no additional cost to the Authority.

## **15 Freight Manager Personnel**

- 15.1 The Freight Manager shall ensure that all Freight Manager Personnel:
- 15.1.1 are suitably qualified, adequately trained, fully supervised and possess suitable skills and experience for the performance of the Services in respect of which they are engaged;
  - 15.1.2 comply with all of the Authority's (or, where relevant, Central Government Body's) policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Authority Premises or premises of any other Central Government Body including, where the relevant Central Government Body is the Ministry of Defence, the relevant terms of Schedule 15 (MOD Terms).
  - 15.1.3 comply with all applicable Laws; and
  - 15.1.4 are subject to contractually binding confidentiality provisions (within their respective employment contracts or otherwise) which are no less onerous than the Freight Manager's obligations under this Agreement and which the Freight Manager undertakes to enforce at the Authority's request.
- 15.2 The Freight Manager shall ensure that:
- 15.2.1 there is an adequate number of Freight Manager Personnel to provide the Services properly and in accordance with the Agreement; and
  - 15.2.2 only those people who are authorised by the Freight Manager are involved in providing the Services.
- 15.3 The Authority may refuse to grant access to and remove any of the Freight Manager Personnel who do not comply with Clause 15.1.2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.

- 15.4 The Freight Manager shall replace any of the Freight Manager Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Freight Manager Personnel for any reason, the Freight Manager shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 15.5 The Freight Manager shall comply with the Authority's procedures for the vetting of personnel and as advised to the Freight Manager by the Authority in respect of all persons employed or engaged in the provision of the Services.

## **16 Key Roles and Key Personnel**

- 16.1 Schedule 13 to this Agreement lists the Key Roles and the names of the Key Personnel whom the Freight Manager shall appoint to perform those Key Roles as at the Effective Date.
- 16.2 The Freight Manager shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term.
- 16.3 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Freight Manager, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 16.4 The Freight Manager acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 16.5 The Freight Manager shall not remove or replace any Key Personnel unless:
- 16.5.1 requested to do so by the Authority;
  - 16.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 16.5.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 16.5.4 the Freight Manager obtains the Authority's prior written consent.
- 16.6 The Authority shall not unreasonably withhold its consent under Clause 16.5.4. Such consent shall be conditional on appropriate arrangements being made by the Freight Manager to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.
- 16.7 The Freight Manager shall:
- 16.7.1 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 Freight Manager shall ensure appropriate temporary cover for that Key Role);
  - 16.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 16.7.3 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 three (3) Months' notice;
  - 16.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and

- 16.7.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 16.8 Without prejudice to Clause 15, the Authority may require the Freight Manager to remove or procure that any Sub-Contractor shall remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

## **17 Change**

### **17.1 Variation Procedure**

- 17.1.1 Subject to the provisions of this Clause 17 either Party may request a variation to this Agreement provided that such variation does not amount to a material change of this Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 17.1.2 A Party may request a Variation by completing, signing and sending the a written variation request to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred ("**Variation Request**").
- 17.1.3 Where the Authority has so specified on receipt of a Variation Request from the Freight Manager, the Freight Manager shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Freight Manager's ability to meet its other obligations under this Agreement;
  - (b) details of the cost of implementing the proposed Variation;
  - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - (e) such other information as the Authority may reasonably request in (or in response to) the Variation Request.
- 17.1.4 The Parties may agree to adjust the time limits specified in the Variation Request to allow for the preparation of the Impact Assessment.
- 17.1.5 Subject to Clause 17.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Request. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 17.1.6 In the event that:
- (a) the Freight Manager is unable to agree to or provide the Variation; and/or
  - (b) the Parties are unable to agree a change to the Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Authority may:

- (i) agree to continue to perform its obligations under this Agreement without the Variation; or
- (ii) terminate this Agreement with immediate effect, except where the Freight Manager has already fulfilled part or all of the provision of the Services in accordance with this Agreement or where the Freight Manager can show evidence of substantial work being carried out to provide the Services under this Agreement, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

17.1.7 If the Parties agree the Variation, the Freight Manager shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Agreement.

## 17.2 Legislative Change

17.2.1 The Freight Manager shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Charges as the result of a:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

17.2.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 17.2.1(b)), the Freight Manager shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Services, the Agreement Charges or this Agreement; and
  - (ii) whether any relief from compliance with the Freight Managers obligations is required, including any obligation to meet the Key Performance Indicators; and
- (b) provide to the Authority with evidence:
  - (i) that the Freight Manager 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 14, has been taken into account in amending the Agreement Charges.

17.2.3 Any change in the Charges or relief from the Freight Managers obligations resulting from a Specific Change in Law (other than as referred to in Clause 17.2.1(b)) shall be implemented in accordance with the procedure for making a Variation as set out at Clause 17.1.

## 18 Charges And Payment

### 18.1 Charges

- 18.1.1 In consideration of the Freight Manager carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the undisputed Charges in accordance with the pricing and payment profile and the invoicing procedure in Schedule 4 (Charges, Payment and Invoicing).
- 18.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
- 18.1.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Freight Manager 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.
- 18.1.4 Notwithstanding any obligations under this Agreement on the Freight Manager to pay costs, charges, dues, deposits, outlays or other expenses in providing the Services, where the Freight Manager incurs any costs as agent of the Authority pursuant to Clause 10.2, the Authority shall be liable to the Freight Manager for any such costs, duties, taxes, charges, dues, deposits, outlays or other expenses:
- (a) that do not form any part of the Charges; and
- (b) which it demonstrates to the Authority's reasonable satisfaction it has properly incurred, wholly and reasonably in the course of providing the Services, and in accordance with the Authority's instructions,
- and the Authority shall pay to the Freight Manager an amount equal to any such costs upon receipt by the Authority of evidence of payment by the Freight Manager and of a valid demand for payment from the Freight Manager in accordance with the provisions of Schedule 4 (Charges, Payment and Invoicing).
- 18.2 VAT
- 18.2.1 The Charges 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 invoice.
- 18.2.2 The Freight Manager shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Freight Managers failure to account for or to pay any VAT relating to payments made to the Freight Manager under this Agreement. Any amounts due under Clause 18.2.1 shall be paid in cleared funds by the Freight Manager 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.
- 18.3 Retention and Set Off
- 18.3.1 The Authority may retain or set off any amount owed to it by the Freight Manager against any amount due to the Freight Manager under this Agreement or under any other agreement between the Freight Manager and the Authority.
- 18.3.2 If the Authority wishes to exercise its right pursuant to Clause 18.3.1 it shall give notice to the Freight Manager within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Charges.

- 18.3.3 The Freight Manager shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Freight Manager has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Freight Manager.

18.4 Foreign Currency

- 18.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Freight Manager free of charge to the Authority.
- 18.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 18.4.1 by the Freight Manager.
- 18.4.3 Notwithstanding the provisions of Clause 18.4.1, if the Freight Manager is required under the terms of the agreement with the Carrier to pay the Air Freight Chartering Costs in a currency other than Sterling, when converting the relevant sums into Sterling (for the purposes of calculating the Charges, or otherwise recovering them from the Authority where permitted to do so under this Agreement), the rate to be applied by the Freight Manager in such currency conversion will be the daily spot exchange rate against Sterling as published by the Bank of England in respect of the date that the payment is made by the Freight Manager to the relevant Carrier and the Freight Manager will show details of the rate applied on the relevant invoice to be submitted to the Authority in accordance with Schedule 4 (Charges, Payment and Invoicing) for any such sums for the purposes of verification and audit by the Authority.

18.5 Income Tax and National Insurance Contributions

- 18.5.1 Where the Freight Manager or any Freight Manager Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Freight Manager shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Freight Manager or any Freight Manager Personnel.
- 18.5.2 In the event that any one of the Freight Manager Personnel is a Worker as defined in Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 18.5.1, the Freight Manager shall ensure that its contract with the Worker contains the following requirements:
- (a) that the Authority may, at any time during the Term, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 18.5.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
  - (b) that the Worker's contract may be terminated at the Authority's request if:

- (i) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 18.5.2(a); and/or
- (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 18.5.1 or confirms that the Worker is not complying with those requirements; and
- (c) that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **19 Air Charter Open Book Costing**

- 19.1 The Freight Manager acknowledges the importance to the Authority of financial transparency and obtaining value for money in a volatile air charter market.
- 19.2 The Freight Manager shall actively manage its costs so as to provide the Services in the most cost effective manner and deliver value for money to the Authority, in particular the Freight Manager shall demonstrate to the Authority that the Air Freight Chartering Costs are within [REDACTED] of the Best Price Available, adopting the following procedure each Month:
  - 19.2.1 the Authority shall within the first fourteen (14) days of each Month notify the Freight Manager in writing of its air freight requirements in the following Month, in accordance with Clause 7.2.
  - 19.2.2 within five (5) Working Days of receiving notification of the Authority's requirements pursuant to Clause 7.2:
    - (a) the Authority shall test the market and obtain confirmation of the Best Price Available and notify the same to the Freight Manager in writing; and
    - (b) the Freight Manager shall in advance of confirming the booking with the relevant Carrier submit to the Authority the Air Charter Open Book Data so as to meet the Authority's air freight requirements for validation that the proposed Air Freight Chartering Costs are within [REDACTED] of the Best Price Available and the Authority's express prior approval;
  - 19.2.3 within ten (10) days of receiving notification of the Authority's requirements pursuant to 19.2.1, the Authority shall either:
    - (a) approve the expenditure of the proposed Air Freight Chartering Costs in the Air Charter Open Book Data, whereupon the Freight Manager shall proceed to book the air charter and incur such costs, which will then form part of the Charges; or
    - (b) confirm that the proposed Air Freight Chartering Costs in the Air Charter Open Book Data are more than [REDACTED] higher than the Best Price Available or otherwise that the Air Charter Open Book Data fails to meet the Authority requirements pursuant to Clause 7 and/or as required by Schedule 2 (Services) (in particular but not limited to the approval of indirect routes in accordance with Schedule 2 (Services)), whereupon the Freight Manager shall either engage the relevant air carrier who gave the Authority the Best Price Available or (where the Air Freight Chartering Costs are rejected because they are more than [REDACTED] higher than the Best Price Available) at its own expense bear the difference between [REDACTED] of the Best Price Available and the air charter costs it actually incurs in meeting the Authority's air freight requirements in the following Month and reduce the Air Freight Chartering Costs payable by the Authority so as to charge the Authority no more than [REDACTED] of the Best Price Available for the costs of air charter so as to meet the Authority's freight requirements each Month.

- 19.3 In the event of a Dispute between the Parties in connection with the Best Price Available, calculation of the proposed Air Freight Chartering Costs or the actual Air Freight Chartering Costs, or the operation of this Clause 19, the Parties shall each submit written justification of their position and attempt to reach agreement in the Management Meeting held in the Month on which the Authority notifies the Freight Manager of its requirements for the following Month pursuant to Clause 7.2. In the event that the Parties fail to reach agreement on the subject matter of any such Dispute, it shall be resolved in accordance with the provisions of Clause 50 of the Agreement.
- 19.4 In addition to the Air Freight Chartering Costs (following approval of those costs pursuant to the process set out in this Clause 19), the Freight Manager shall also be entitled to charge the Authority the agreed, fixed rate Air Charter Management Fee in respect of the air charter Services, subject to the terms of Schedule 3 (Performance Standards and Key Performance Indicators), and in particular consequences arising for a failure to meet the required standard in the KPI relating to Financial Management.
- 19.5 Throughout the duration of the Agreement, and for a period of eighteen (18) Months following the end of the Agreement, the Freight Manager shall:
- 19.5.1 maintain and retain the Air Charter Open Book Data; and
  - 19.5.2 disclose and allow the Authority and/or its duly authorized agents or subcontractors access to the Air Charter Open Book Data.

## **20 Promoting Tax Compliance**

- 20.1 This Clause 20 shall apply if the Charges payable under this Agreement exceed or are likely to exceed five million pounds (£5,000,000) during the Term.
- 20.2 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Freight Manager shall:
- 20.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 20.2.2 promptly provide to the Authority:
    - (a) details of the steps that the Freight Manager is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 20.3 In the event that the Freight Manager fails to comply with this Clause 20 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Agreement for material Default.

## **21 Benchmarking**

Notwithstanding the Freight Managers obligations under Clause 14, the Authority shall be entitled to regularly conduct benchmarking in accordance with Schedule 9 (Benchmarking).

## **22 Intellectual Property Rights**

- 22.1 All Intellectual Property Rights in any guidance, know-how, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):



22.1.1 furnished to or made available to the Freight Manager by or on behalf of the Authority shall remain the property of the Authority; and

22.1.2 prepared by or for the Freight Manager on behalf of the Authority for use, or intended use, in relation to the performance by the Freight Manager of its obligations under the Agreement shall belong to the Authority;

and the Freight Manager shall not, and shall ensure that the Freight Manager Personnel shall not, (except when necessary for the performance of the Agreement) without prior written consent, use or disclose any Intellectual Property Rights in the IP Materials.

22.2 The Freight Manager hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 22.1.2. This assignment shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Freight Manager. The Freight Manager shall execute all documentation necessary to execute such assignment.

22.3 The Authority hereby grants a royalty free, non-exclusive, licence (with no right to sub-licence) for the duration of the Term to the Freight Manager to use all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 22.1.2. This licence shall take effect on the Effective Date.

22.4 The Freight Manager grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Freight Manager owned or developed prior to the Effective Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services.

22.5 The Freight Manager shall waive or procure a waiver of any moral rights subsisting in copyright created in the Services or the performance thereof.

22.6 The Freight Manager shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Agreement grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain such Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to any assignee or novatee of this Agreement, the Replacement Freight Manager or to any other third party supplying services to the Authority.

22.7 The Freight Manager shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Freight Manager shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

22.7.1 items or materials based upon designs supplied by the Authority; or

22.7.2 the use of data supplied by the Authority which is not required to be verified by the Freight Manager under any provision of this Agreement.

22.8 The Authority shall notify the Freight Manager in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Freight Manager.

- 22.9 The Freight Manager shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Freight Manager, provided always that the Freight Manager:
- 22.9.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 22.9.2 shall take due and proper account of the interests of the Authority; and
  - 22.9.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 22.10 The Authority shall at the request of the Freight Manager afford to the Freight Manager all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Freight Manager by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Freight Manager's obligations under this Agreement and the Freight Manager shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Freight Manager shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clauses 22.7.1 or 22.7.2.
- 22.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Freight Manager in connection with the performance of its obligations under this Agreement.
- 22.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or, in the reasonable opinion of the Freight Manager, is likely to be made, the Freight Manager shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 22.12.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - 22.12.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority; and
  - 22.12.3 in the event that the Freight Manager is unable to comply with Clauses 22.12.1 or 22.12.2 within twenty (20) Working Days of receipt of the Freight Manager's notification the Authority may terminate this Agreement with immediate effect by written notice.

## **23 Liability**

### **23.1 Unlimited Liability**

- 23.1.1 Neither Party excludes or limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - (b) bribery or fraud by it or its employees;
  - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

- (d) the indemnities at Clauses 12.6, 13.4, 18.2, 18.5, 22.7, 22.10, or 31.2; or
- (e) any liability to the extent it cannot be excluded or limited by Law.

## 23.2 Financial Limits

23.2.1 Subject to Clause 23.1, 23.2.3, and 23.3, the Freight Manager's liability for all matters arising (whether in contract tort or otherwise) out of or in connection with the delivery of the Services shall be determined and limited as follows:

- (a) notwithstanding Clause 10.12, in the event that the Freight Manager is liable for loss or damage to the Goods in connection with the Services, a sum equal to the lesser of:
  - (i) the value of any such Goods lost or damaged; and
  - (ii) the limits prescribed by the Conventions in respect of liability of a carrier for cargo lost or damaged (without prejudice to the Freight Manager's status under this Agreement as an intermediary, and not a carrier);
- (b) in respect of any other Losses shall be determined and limited per claim to 150% of the value of the total aggregated Charges relating to the particular Services forming the subject matter of that claim.

23.2.2 For the purposes of Clause 23.2.1 above

- (a) the value of the Goods shall be their value as there were or should have been at the time of shipment, and the value of the SDR or other unit of currency shall be calculated at the time of the claim is made by the Authority in writing; and
- (b) the Freight Manager shall be treated as principal responsible for the acts and omissions of third parties it has engaged for the performance of the Services in the same manner as if such acts and omissions were its own.

23.2.3 If and to the extent that a part of the Services provided by the Freight Manager is subject to compulsory application of any international convention or legislation, the Freight Manager's liability to the Authority in respect of loss of or damage to the Goods in the course of providing those particular Services shall be determined according to the principles of that particular convention or legislation, including:

- (a) for international carriage of goods by road the Convention for International Carriage of Goods by Road (the "CMR");
- (b) for international carriage of goods by sea the Hague-Visby Rules or, if applicable for transportation to or from the US, the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. app. §§ 1300-1315;
- (c) for international carriage by air the Montreal Convention; and/or
- (d) for international carriage of goods by rail the Uniform Rules concerning the Agreement for International Carriage of Goods by Rail.

23.2.4 Subject to Clause 23.1 (Unlimited Liability) and without prejudice to its obligation to pay the undisputed Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

- (a) in relation to any Losses arising from the Operational Commencement Date to the end of the first Agreement Year, a sum equal to the Estimated Year 1 Charges; and
- (b) in relation to any Losses arising in each subsequent Agreement Year, a sum equal to the Charges payable to the Freight Manager under this Agreement in the previous Agreement Year.

### 23.3 Non-recoverable Losses

23.3.1 Subject to Clause 23.1 neither Party shall be liable to the other Party for any:

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

23.4 Provided that the Freight Manager has complied with all its obligations under this Agreement, the Freight Manager shall not be liable for any Losses, or delays which it objectively demonstrates to the Authority result directly from:

23.4.1 the act, default or omission of the Authority, its agents or sub-contractors involved in the handling of the Goods or any other consignee or consignor of the Goods (where not the Freight Manager or its agents or Sub-Contractors);

23.4.2 any inherent defect in the Goods; or

23.4.3 without limiting the generality of Clause 23.4.1 its reliance on any materially inaccurate instructions, information or documentation received by the Freight Manager in connection with the transportation, storage or handling of Goods,

provided that:

23.4.4 where the Freight Manager becomes aware or ought reasonably to have become aware (acting reasonably as a skilled provider of the Services and having regard to all the circumstances) of the occurrence of any of the circumstances described in Clauses 23.4.1 to 23.4.3 above it shall immediately inform the Authority;

23.4.5 wherever possible, take all reasonable steps to rectify the situation (including taking all reasonable steps to obtain any correct information); and

23.4.6 the Freight Manager shall mitigate any such Losses or delays.

### 23.5 Recoverable Losses

23.5.1 Subject to Clause 23.2 and notwithstanding Clause 23.3, the Freight Manager acknowledges that the Authority may, amongst other things, recover from the Freight Manager the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Freight Manager or any of its Sub-Contractors:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges (including additional storage and/or demurrage costs);
- (c) the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such

Replacement Services above those which would have been payable under this Agreement;

(d) any compensation or interest paid to a third party by the Authority; and

(e) any fine, penalty or costs incurred by the Authority pursuant to Law.

23.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

## **24 Insurance**

24.1 The Freight Manager shall provide and maintain at all times in accordance with the provisions of Schedule 8 (Insurance Requirements) transport and logistics operator's general liability insurance as Additional Insurances so as to fully cover, as a minimum, its potential liability to the Authority, and where applicable any third party, under the terms of this Agreement.

## **25 Business Continuity and Disaster Recovery**

25.1 The Parties shall comply with the provisions of Schedule 10 (Business Continuity and Disaster Recovery).

## **26 Termination on Insolvency and Change Of Control**

The Authority may terminate the Agreement with immediate effect by giving written notice:

26.1 where the Freight Manager is a company:

26.1.1 the Freight Manager suffers an Insolvency Event;

26.1.2 the Freight Manager suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

26.1.3 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Freight Manager which:

(a) adversely impacts on the Freight Manager's ability to supply the Services in accordance with the Agreement; or

(b) could reasonably be expected to have an adverse impact on the Freight Manager's ability to supply the Services in accordance with the Agreement; or

26.1.4 the Freight Manager demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Freight Manager; or

26.1.5 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Freight Manager comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

26.2 The Freight Manager being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

26.3 The Freight Manager being an individual or any partner or partners in the Freight Manager who together are able to exercise control of the Freight Manager where the Freight Manager is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear

unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or

- 26.4 Any event similar to those listed in Clauses 26.1 to 26.3 occurs under the law of any other jurisdiction.
- 26.5 The Freight Manager shall notify the Authority immediately if the Freight Manager undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Agreement by notice in writing with immediate effect within six (6) Months of:
- 26.5.1 being notified that a Change of Control has occurred or is planned or is in contemplation; or
- 26.5.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where the Authority's written consent to the continuation of the Agreement was granted prior to the Change of Control.

## **27 Termination on Default**

Without prejudice to any rights of the Authority under Schedule 3 (Performance Standards and Key Performance Indicators):

- 27.1 In the case of a breach of any of the terms of this Agreement by the Freight Manager that is capable of remedy (including, without limitation any failure to pay any sums due under this Agreement), the Authority shall, without prejudice to its other rights and remedies under this Agreement, issue notice of the breach and allow the Freight Manager the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Freight Manager ("**Remedial Proposal**") before exercising any right to terminate this Agreement in accordance with Clause 27.2. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Freight Manager in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Freight Manager to:
- 27.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant Default within a period of ten (10) Working Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant Default from the Authority;
- 27.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
- 27.1.3 remedy the Default notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 27.2.1(b), a material breach of this Agreement by the Freight Manager not remedied in accordance with an agreed Remedial Proposal.
- 27.2 The Authority may terminate the Agreement, or terminate the provision of any part of the Services, with immediate effect by giving written notice to the Freight Manager if the Freight Manager:

- 27.2.1 commits a material Default of any of the terms of this Agreement which is:
- (a) not capable of remedy; or
  - (b) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
- 27.2.2 has been served with at least two (2) previous breach notices as a result of any material Defaults which are capable of remedy within any twelve (12) Month rolling period whether or not the Freight Manager has remedied the breach in accordance with a Remedial Proposal. The twelve (12) Months rolling period is the twelve (12) Months immediately preceding the date of the third breach notice.
- 27.3 The Authority shall be entitled to terminate the Agreement with immediate effect by giving written notice to the Freight Manager where the warranty given by the Freight Manager pursuant to Clause 4.2.6 is materially untrue, the Freight Manager commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 4.2.6(a), or the Freight Manager fails to provide details of proposed mitigating factors as required by Clause 4.2.6(b) that in the reasonable opinion of the Authority are acceptable.
- 27.4 If the Authority fails to pay the Freight Manager undisputed sums of money after thirty (30) days of having received a valid invoice, the Freight Manager shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Freight Manager may terminate the Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 18.3.
- 28 Termination for Breach of the Regulations**
- 28.1 The Authority may terminate the Agreement with immediate effect by giving written notice to the Freight Manager on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Regulations.
- 29 Consequences of Expiry or Earlier Termination**
- 29.1 Upon termination or expiry of this Agreement (howsoever arising):
- 29.1.1 the Freight Manager shall complete the provision of any outstanding Services which the Freight Manager duly commenced prior to the date of termination, and where transportation of the Goods forms part of those Services ensure that the Goods are so transported to the correct destination; and
  - 29.1.2 subject to Clauses 29.3 and 29.4, the Authority shall pay all outstanding undisputed sums due to the Freight Manager in accordance with this Agreement, including, for the avoidance of doubt, for the provision of such Services referred to in Clause 29.1.1 above.
- 29.2 The Parties shall comply with the exit management provisions set out in Schedule 12 (Exit Management).
- 29.3 Where the Authority terminates the Agreement under Clause 27 and then makes other arrangements for the supply of Services, the Authority may recover from the Freight Manager the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure.
- 29.4 Where the Agreement is terminated under Clause 27, no further payments shall be made by the Authority to the Freight Manager (for Services supplied by the Freight Manager prior to termination and in accordance with the Agreement but where the payment has yet to be made

by the Authority), until the Authority has established the final cost of arranging an alternative supplier of the Services.

29.5 Save as otherwise expressly provided in the Agreement:

- 29.5.1 termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 29.5.2 any clause which is to continue in force, whether expressly or by implication, shall do so.

### **30 Confidentiality**

30.1 For the purposes of this Clause 30, 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.

30.2 Except to the extent set out in the rest of this Clause 30 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- 30.2.1 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);
- 30.2.2 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;
- 30.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- 30.2.4 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.

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

- 30.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 33 shall apply to disclosures required under the FOIA or the EIRs;
- 30.3.2 the need for such disclosure arises out of or in connection with:
  - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
  - (b) 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
  - (c) the conduct of a Central Government Body review in respect of this Agreement; or



- (d) 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.
- 30.4 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.
- 30.5 Subject to Clause 30.2, the Freight Manager may only disclose the Confidential Information of the Authority on a confidential basis to:
  - 30.5.1 Freight Manager Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Freight Managers obligations under this Agreement; and
  - 30.5.2 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- 30.6 Where the Freight Manager discloses Confidential Information of the Authority pursuant to Clause 30.5, 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.
- 30.7 The Authority may disclose the Confidential Information of the Freight Manager:
  - 30.7.1 to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
  - 30.7.2 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - 30.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 30.7.4 on a confidential basis to a professional adviser, consultant, Freight Manager or other person engaged by any of the entities described in Clause 30.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
  - 30.7.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
  - 30.7.6 to a proposed transferee, assignee or novatee of, or successor in title to, the Authority,

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 30.
- 30.8 Nothing in this Clause 30 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.
- 30.9 In the event that the Freight Manager fails to comply with Clauses 30.2 to 30.5, the Authority reserves the right to terminate this Agreement for material Default.

## **31 Personal Data**

- 31.1 The Parties shall comply with the terms of Schedule 7 (Data Protection).
- 31.2 The Freight Manager shall indemnify the Authority for all Losses arising as a result of the Freight Manager's (or any of its Sub-Contractors') Default in respect of Schedule 7 (Data Protection).

## **32 Transparency**

- 32.1 The Freight Manager recognises that the Authority is subject to PPN 01/17: Update to Transparency Principles (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Freight Manager shall comply with the provisions of this Clause 32 in order to assist the Authority with its compliance with its obligations under that PPN.
- 32.2 The Parties agree and acknowledge that the content of this Agreement is not Confidential Information, except for:
- 32.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
- 32.2.2 Commercially Sensitive Information.
- 32.3 Notwithstanding any other provision of this Agreement, the Freight Manager hereby gives its consent for the Authority to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time. The Authority may consult with the Freight Manager to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 32.4 The Freight Manager shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **33 Freedom of Information**

- 33.1 The Freight Manager acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Freight Manager shall:
- 33.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- 33.1.2 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;
- 33.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information 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
- 33.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 33.2 The Freight Manager 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 Freight Manager. The Authority shall take reasonable steps to notify the Freight Manager 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/or the EIRs.

### **34 Audit Rights**

34.1 The Authority, acting by itself or through its duly authorised third party auditor agents or Sub-Contractors, shall have the right throughout the duration of the Agreement and for a period of eighteen (18) Months thereafter, to assess compliance by the Freight Manager and/or its Key Sub-Contractors of the Freight Manager's obligations under this Agreement, including for the following purposes:

- 34.1.1 to verify the integrity and content of any financial report;
- 34.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- 34.1.3 to verify the Charges (including the amounts paid to all Sub-Contractors and any third-party suppliers);
- 34.1.4 to verify the Open Book Air Freight Data;
- 34.1.5 to verify the Freight Manager's and each Key Sub-Contractor's compliance with this Agreement and applicable Law;
- 34.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Freight Manager of the purpose or objective of its investigations;
- 34.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Freight Manager and/or any Key Sub-Contractors or their ability to perform the Services;
- 34.1.8 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 34.1.9 to review any books of account and the internal contract management accounts kept by the Freight Manager in connection with this Agreement;
- 34.1.10 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- 34.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 34.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- 34.1.13 to review any performance management reports and/or other records relating to the Freight Manager's performance of the Services and to verify that these reflect the Freight Manager's own internal reports and records;
- 34.1.14 to inspect the IT environment (or any part of it) and the wider service delivery environment (or any part of it);

- 34.1.15 to review the Freight Manager's quality management systems, manuals and procedures;
  - 34.1.16 to review the Freight Manager's compliance with the Standards;
  - 34.1.17 to inspect the equipment and facilities and any Goods held by the Freight Manager pursuant to this Agreement, for the purposes of ensuring that the Goods are secure; and/or
  - 34.1.18 to review the integrity, confidentiality and security of the data relating to the Goods held by the Freight Manager pursuant to this Agreement.
- 34.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Freight Manager has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Freight Manager or of the same Key Sub-Contractor more than twice in any Agreement Year.
- 34.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Freight Manager and/or any of the Key Sub-Contractors for the purposes of and pursuant to applicable Law.

## **35 Conduct of Audits**

- 35.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Freight Manager that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Freight Manager or delay the provision of the Services.
- 35.2 Subject to the Authority's obligations of confidentiality, the Freight Manager shall on demand provide the Authority and its third party agents or Sub-Contractors with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-Contractors) in relation to each audit, including:
- 35.2.1 all information requested by the Authority within the permitted scope of the audit;
  - 35.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - 35.2.3 access to the Freight Manager systems (including relevant access to the IT System); and
  - 35.2.4 access to Freight Manager Personnel.
- 35.3 The Freight Manager shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Freight Manager's performance of the Services against the applicable Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 35.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 35.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 35, unless the audit identifies a material Default by the Freight Manager in which case the Freight Manager shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.
- 35.6 As an alternative to the Authority's right pursuant to this Clause 35 to exercise an audit either itself or through its duly authorised third party agents or sub-contractors, the Authority may require in writing that an audit is undertaken by the Freight Manager's own internal audit

function for any of the purposes set out in Clause 34.1. Following the receipt of a request from the Authority under this Clause, the Freight Manager shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- 35.6.1 the resultant audit reports; and
- 35.6.2 all relevant members of the Freight Manager's internal audit team for the purpose of understanding such audit reports.

### **36 Response to audits**

- 36.1 If an audit undertaken pursuant to Clause 34.1 or 34.3 identifies that:
  - 36.1.1 the Freight Manager has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Freight Manager to correct such Default as soon as reasonably practicable;
  - 36.1.2 there is an error in a financial report submitted by the Freight Manager, the Freight Manager shall promptly rectify the error;
  - 36.1.3 the Authority has overpaid any Charges, the Freight Manager shall pay to the Authority:
    - (a) the amount overpaid;
    - (b) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Freight Manager; and
    - (c) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; or
  - 36.1.4 the Authority has underpaid any Charges, the Freight Manager shall not be entitled to increase the Charges paid or payable by the Authority.

### **37 Publicity and branding**

- 37.1 The Freight Manager shall not:
  - 37.1.1 make any press announcements or publicise this Agreement in any way; or
  - 37.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders, without approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).
- 37.2 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 and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

### **38 Force majeure**

- 38.1 Subject to the remainder of Clause 38 (and, in relation to the Freight Manager, subject to its compliance with any obligations in Clause 25.1 and Schedule 10 (Business Continuity and

Disaster Recovery)), a Party may claim relief under Clause 38 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 Freight Manager in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or Freight Manager shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Freight Manager is itself impeded by a Force Majeure Event from complying with an obligation to the Freight Manager.

- 38.2 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.
- 38.3 If the Freight Manager is the Affected Party, it shall not be entitled to claim relief under Clause 38 to the extent that consequences of the relevant Force Majeure Event:
- 38.3.1 are capable of being mitigated by any of the provision of any Services, including the Freight Manager's engagement of its Business Continuity Plan and Disaster Recovery Plan (both of which are as detailed in Schedule 10), but the Freight Manager has failed to do so; and/or
  - 38.3.2 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.
- 38.4 Subject to Clause 38.5, 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.
- 38.5 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 Freight Manager 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.
- 38.6 Where, as a result of a Force Majeure Event:
- 38.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
    - (a) 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 unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
    - (b) the Freight Manager shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
  - 38.6.2 the Freight Manager fails to perform its obligations in accordance with this Agreement the Freight Manager 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 provided in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 38.7 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.

- 38.8 Relief from liability for the Affected Party under Clause 38 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 38.7.

### **39 Appointment of Sub-Contractors**

- 39.1 The Freight Manager shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Freight Manager is able to:
- 39.1.1 manage any Sub-Contractors in accordance with Good Industry Practice;
  - 39.1.2 comply with its obligations under this Agreement in the delivery of the Services; and
  - 39.1.3 at the Authority's request assign, novate or otherwise transfer to the Authority or any Replacement Freight Manager any of its rights and/or obligations under each sub-contract that relates exclusively to this Agreement.
- 39.2 If requested by the Authority within two (2) Working Days of receipt of such request, the Freight Manager shall provide:
- 39.2.1 the Sub-Contractor's name, registered office and company registration number;
  - 39.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
  - 39.2.3 a copy of the proposed sub-contract; and
  - 39.2.4 any further information reasonably requested by the Authority.
- 39.3 The Authority may, acting reasonably, object to the engagement of a Sub-Contractor if it considers and can demonstrate (subject always to duties of confidentiality) to the Freight Manager that:
- 39.3.1 the appointment of the relevant Sub-Contractor is prejudicing the provision of the Services and/or may be contrary to the interests of the Authority;
  - 39.3.2 the Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - 39.3.3 the Sub-Contractor employs unfit persons,
- in which case, the Freight Manager shall cease to use the relevant Sub-Contractor in the delivery of the Services under this Agreement.
- 39.4 Subject to Paragraph 1.1 of Schedule 6 (Key Sub-Contractors) where the Freight Manager wishes to enter into a Key Sub-Agreement or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 39.5 Notwithstanding the Freight Manager's right to sub-contract, the Freight Manager 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. In respect of any element of the Services delivered by Freight Manager Personnel and/or which are sub-contracted by the Freight Manager, an obligation on the Freight Manager to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Freight Manager to procure that the Freight Manager Personnel and the Sub-Contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

### **40 Compliance**

#### 40.1 Health and Safety

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

#### 40.2 Equality and Diversity

- 40.2.1 The Freight Manager shall:
- (a) perform its obligations under this Agreement (including those in relation to provision of the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
    - (ii) 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;
  - (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).

#### 40.3 Official Secrets Act and Finance Act

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

#### 40.4 Environmental Requirements

- 40.4.1 The Freight Manager shall, when working on the Sites, perform its obligations under this Agreement in accordance with the Environmental Policy of the Authority.
- 40.4.2 The Authority shall provide a copy of its written Environmental Policy (if any) to the Freight Manager upon the Freight Managers written request.

### 41 Assignment and novation



- 41.1 The Freight Manager 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 or any part of it without approval.
- 41.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Agreement or any part thereof to:
- 41.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- 41.2.2 any private sector body which substantially performs the functions of the Authority,
- and the Freight Manager 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 41.2.
- 41.3 A change in the legal status of the Authority shall not, subject to Clause 41.4 affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 41.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a private sector body in accordance with Clause 41.2.2 (the "**Transferee**" in the rest of this Clause 41.4) the right of termination of the Authority in Clause 23 shall be available to the Freight Manager in the event of insolvency of the Transferee (as if the references to Freight Manager in Clause 26 and to the Freight Manager or Guarantor in the definition of Insolvency Event were references to the Transferee).

## **42 Waiver and cumulative remedies**

- 42.1 The rights and remedies under this Agreement may be waived only by notice in accordance with Clause 49 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this 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 right or remedy.
- 42.2 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.

## **43 Relationship of the parties**

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

## **44 Prevention of fraud and bribery**

- 44.1 The Freight Manager represents and warrants that neither it, nor to the best of its knowledge any Freight Manager Personnel, have at any time prior to the Effective Date:
- 44.1.1 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
- 44.1.2 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.

- 44.2 The Freight Manager shall not during the Term:
- 44.2.1 commit a Prohibited Act; and/or
  - 44.2.2 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.
- 44.3 The Freight Manager shall during the Term:
- 44.3.1 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;
  - 44.3.2 keep appropriate records of its compliance with its obligations under Clause 44.3.1 and make such records available to the Authority on request;
  - 44.3.3 if so required by the Authority, within twenty (20) Working Days of the Effective Date, and annually thereafter, certify to the Authority in writing that the Freight Manager and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Agreement are compliant with the Relevant Requirements. The Freight Manager shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 44.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Freight Manager Personnel or any person acting on the Freight Managers behalf from committing a Prohibited Act.
- 44.4 The Freight Manager shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 44.1, or has reason to believe that it has or any of the Freight Manager Personnel have:
- 44.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 44.4.2 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
  - 44.4.3 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.
- 44.5 If the Freight Manager makes a notification to the Authority pursuant to Clause 44.4, the Freight Manager 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 34 (Audit Rights).
- 44.6 If the Freight Manager breaches Clause 44.3, the Authority may by notice:
- 44.6.1 require the Freight Manager to remove from performance of this Agreement any Freight Manager Personnel whose acts or omissions have caused the Freight Managers breach; or

44.6.2 immediately terminate this Agreement for material Default.

- 44.7 Any notice served by the Authority under Clause 44.4 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).

#### **45 Severance**

- 45.1 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.
- 45.2 In the event that any deemed deletion under Clause 45.1 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 practicable, achieves the Parties' original commercial intention.
- 45.3 If the Parties are unable to resolve the Dispute arising under Clause 45 within twenty (20) Working Days of the date of the notice given pursuant to Clause 45.2, 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 Clause 45.

#### **46 Further assurances**

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

#### **47 Entire agreement**

- 47.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 47.2 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.
- 47.3 Nothing in this Clause 47 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **48 Third party rights**

- 48.1 A person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **49 Notices**

- 49.1 Except as otherwise expressly provided within this Agreement, any notices sent under this Agreement must be in writing. For the purpose of this Clause 49, an e-mail is accepted as being "in writing".

- 49.2 Subject to Clause 49.3, 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 delivery	Proof of Service
Email (Subject to Clauses 49.3 and 49.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For <sup>TM</sup> 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 49.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For<sup>TM</sup> 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 49.2:

49.3.1 any notice in respect of:

- (a) termination;
- (b) waiver
- (c) Default; and

49.3.2 any Dispute Notice.

- 49.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 49.3 shall invalidate the service of the related email transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For<sup>TM</sup> 1<sup>st</sup> Class delivery (as set out in the table in Clause 49.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 49.5 This Clause 49 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

- 49.6 For the purposes of this Clause 49, the address and email address of each Party shall be:

**For the Authority:**

For the attention of: [REDACTED]

Address: Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

Email address: [REDACTED]

**For The Freight Manager:**

For the attention of: [REDACTED]

Address: Kuehne + Nagel Limited  
1 Roundwood Avenue  
Stockley Park  
Uxbridge  
Middlesex  
UB11 1FG

Email address: [REDACTED]

- 49.7 The Freight Manager irrevocably consents to any process in any legal action or proceedings being served on it in accordance with the provisions of this Agreement relating to service of notices. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

**50 Dispute resolution**

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

**51 Governing law and jurisdiction**

- 51.1 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.
- 51.2 Subject to Clause 50 and Schedule 11 (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.

## **Schedule 1**

### **Definitions**

<b>Affected Party</b>	means the party seeking to claim relief in respect of a Force Majeure Event;
<b>Affiliate</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>Agreement</b>	means this agreement between the Authority and the Freight Manager for supply of the Services;
<b>Agreement Year</b>	means a consecutive period of twelve (12) Months commencing on the Operational Commencement Date or each anniversary thereof;
<b>Aircraft</b>	means any aircraft for the time being operated in connection with any Charter Flight;
<b>Air Charter Management Fee</b>	means the fixed fee (calculated at a flat rate and not, for the avoidance of doubt, a percentage of costs) payable to the Freight Manager by the Authority (subject to the terms of Schedule 3 (Performance Standards & Key Performance Indicators)) as set out in Annex 1 to Schedule 4 (Charges, Payment and Invoicing) in respect of the management and delivery of air charter services in a cost-effective and timely manner and in accordance with the Authority's instructions so as to meet the Authority's air charter requirements in respect of transportation of the Goods;
<b>Air Charter Open Book Data</b>	<p>complete and accurate financial and non- financial information which is sufficient to enable the Authority to verify and test against the Best Price Available in the market each Month the air charter costs which it is proposed by the Freight Manager are to be paid (and submitted in advance for the Authority's assessment and approval) in order to meet the Authority's air freight requirements in the following Month (as notified to the Freight Manager by the Authority in writing in advance (and including but not limited to the approval of indirect routes in accordance with Schedule 2 (Services))) throughout the duration of the Agreement, including (without limitation):</p> <ul style="list-style-type: none"><li>(a) full details and all assumptions relating to those costs;</li><li>(b) details of the proposed freight provider;</li><li>(c) the route to be adopted;</li><li>(d) the air frame or air frames to be used;</li><li>(e) confirmation of the airport of origin and destination;</li><li>(f) the unit costs per cubic metre; and</li><li>(g) where applicable, an explanation of the type and value of risk and contingencies associated with the provision of the</li></ul>

Services, including the amount of money attributed to each risk and/or contingency;

**Air Freight Chartering Costs**

the costs of air charter payable by the Authority, as approved in accordance with Clause 19 (Air Charter Open Book Costing);

**Authority Cause**

means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Agreement and in respect of which the Authority is liable to the Freight Manager;

**Authority Premises**

means premises owned, controlled or occupied by the Authority which are made available for use by the Freight Manager or its Sub-Contractors for the provision of the Services (or any of them);

**Authority's Confidential Information**

means:

- a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority;
- b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority's attention or into the Authority's possession in connection with this Agreement; and
- c) information derived from any of the above;

**Best Price Available**

means the lowest price for air charters obtained by the Authority or its duly authorised representatives each Month in a binding quotation from a third party air carrier (or as published in industry market data from a recognised independent third party provider of such information) so as to meet the Authority's and air freight requirements for the transportation of goods by air pursuant to this Agreement for the following Month for the same volume of air freight requirements as has been notified by the Authority to the Freight Manager earlier in that Month, from the same airport of origin to the same final destination in the United Kingdom (but provided any indirect routes are approved by the Authority in accordance with Schedule 2 (Services) not necessarily utilising the same air frames, routes or destination airport in the United Kingdom);

**Carrier**

means the operator of the Aircraft;

**Carrier Insolvency Event**

means in respect of any Carrier:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, such party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or

- (b) the appointment of an administrator of, or the making of an administration order in relation to, either party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling the whole or any part of the entity's undertaking, assets, rights or revenue; or
- (c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- (e) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors,

or anything analogous to any of the foregoing occurs under the law of any jurisdiction;

**Central Government Body**

a body listed in one of the following subcategories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a) Government Department;
- b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c) Non-Ministerial Department; or
- d) Executive Agency;

**Change in Law**

means any change in Law which impacts on the supply of the Services (including taxation or duties of any sort affecting the Freight Manager) which comes into force after the Effective Date;

**Change of Control**

has the meaning given in Clause 26.5;

**Charges**

means the charges raised under or in connection with the Agreement from time to time, which shall be as set out in and calculated in accordance with Schedule 4 (Charges, Payment and Invoicing);

**Charter Flight**

means a flight required to meet the Authority's air freight requirements and fulfil the Instructions, which has been approved by the Authority in accordance with the provisions of Clause 10 (Air Charter Services);

**Commercially Sensitive Information**

means the Confidential Information listed in the Order Form (if any) comprising commercially sensitive information relating to the Freight Manager, its Intellectual Property Rights or its business or which the Freight Manager has indicated to the Authority that, if



disclosed by the Authority, would cause the Freight Manager significant commercial disadvantage or material financial loss;

<b>Comparable Supply</b>	the supply of services to another customer of the Freight Manager that are the same or similar to the Services;
<b>Confidential Information</b>	means the Authority's Confidential Information and/or the Freight Managers Confidential Information, as the context specifies;
<b>Conventions</b>	means the conventions for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, Poland, on October 12, 1929, as amended by the Protocol signed at The Hague, Netherlands, on September 28, 1955 (collectively called the "Warsaw Convention") and/or by the rules and regulations established by the Montreal Convention on the Unification of Certain Rules for International Carriage signed in Montreal on 28th May 1999 ("the Montreal Convention");
<b>Default</b>	means any breach of the obligations of the Freight Manager (including but not limited to including abandonment of the Agreement in breach of its terms) or any other default (including deliberate or wilful breach or misconduct), act, omission, negligence or statement of the Freight Manager, of its Sub-Contractors or any Freight Manager Personnel howsoever arising in connection with or in relation to the subject-matter of the Agreement and in respect of which the Freight Manager is liable to the Authority;
<b>Dispute</b>	means any dispute, difference or question of interpretation arising out of or in connection with the Agreement, including any dispute, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure
<b>Dispute Notice</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>Dispute Resolution Procedure</b>	means the dispute resolution procedure set out in Schedule 11 (Dispute Resolution);
<b>Due Diligence Information</b>	means any information supplied to the Freight Manager by or on behalf of the Authority prior to the Effective Date;
<b>Effective Date</b>	means the date of this Agreement;
<b>EIRs</b>	the Environmental Information Regulations 2004;
<b>Environmental Policy</b>	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;

<b>Estimated Year 1 Charges</b>	means the sum in pounds estimated by the Authority to be payable by it to the Freight Manager as the total aggregate Charges from the Operational Commencement Date until the end of the first Agreement Year;
<b>Exit Day</b>	shall have the meaning in the European Union (Withdrawal) Act 2018;
<b>Extended Term</b>	has the meaning given in Clause 6.2;
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>Force Majeure Event</b>	<p>any event outside the reasonable control of either Party affecting its performance of its obligations under the 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:</p> <ul style="list-style-type: none"> <li>a) any industrial dispute relating to the Freight Manager or the Freight Manager Personnel;</li> <li>b) any other failure in the Freight Manager's or a Sub-contractor's supply chain</li> <li>c) any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union; or</li> <li>d) any event or other consequence arising as a result of or in connection with the COVID-19 pandemic SAVE FOR circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Services cannot be provided as set out in this Agreement (in all material respects) without such Laws and/or government guidance being breached, or if the Freight Manager can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Services due to the levels of COVID-19 infections in the relevant population;</li> </ul>
<b>Force Majeure Notice</b>	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;
<b>Freight Manager's Confidential Information</b>	<p>means</p> <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Freight Manager trade secrets, Know-How, and/or personnel of the Freight Manager;</li> </ul>

- b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Freight Managers attention or into the Freight Managers possession in connection with this Agreement;
- c) information derived from any of the above;

<b>Freight Manager Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Freight Manager and/or of any Sub-Contractor engaged in the performance of the Freight Managers obligations under the Agreement;
<b>General Change in Law</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>Global Trade Management Platform</b>	means the Authority's platform for management of the international transportation of goods, including the Goods;
<b>Good Industry Practice</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>Goods</b>	means the goods purchased by the Authority from a third party supplier which are the subject to the Services to be performed by the Freight Manager under the terms of the Agreement;
<b>Guarantee</b>	means a deed of guarantee that may be required under the Agreement in favour of the Authority in the form set out in Schedule 14 (Guarantee) granted pursuant to Clause 5 (Guarantee);
<b>Guarantor</b>	means the person, in the event that a Guarantee is required under the Agreement, acceptable to the Authority to give a Guarantee;
<b>Halifax Abuse Principle</b>	if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>Initial Term</b>	has the meaning given in Clause 6.1;
<b>Insolvency Event</b>	means, in respect of the Freight Manager or Guarantor: <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> </ul>

- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Freight Manager or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

**Instruction**

means the final, written confirmation of each order for the Services setting out the Authority's specific requirements for that order in accordance with Clause 7.3;

**Intellectual Property Rights or IPR**

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

**IT Systems**

means the IT systems used by the Freight Manager to provide the Services and all hardware, software, and in each case associated documentation, necessary to operate the same and perform the Services in accordance with the Agreement;

**Key Performance Indicators/ KPI**

has the meaning given in Schedule 3 (Performance Standards and Key Performance Indicators);

<b>Key Sub-Contract</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>Key Sub-Contractor</b>	means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Schedule 6 (Key Sub-Contractors);</li> <li>b) 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</li> <li>c) with a sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Agreement;</li> </ul>
<b>Know-How</b>	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 the Effective Date;
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Freight Manager is bound to comply;
<b>Losses</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and " <b>Loss</b> " shall be interpreted accordingly;
<b>Management Information</b>	means information provided by the Freight Manager to aid decision making and provide oversight of the performance of the Agreement;
<b>Month</b>	means a calendar month and " <b>Monthly</b> " shall be interpreted accordingly;
<b>Occasions of Tax Non-Compliance</b>	means: <ul style="list-style-type: none"> <li>a) any tax return of the Freight Manager submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Freight Manager under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Freight Manager was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> </ul>

- b) any tax return of the Freight Manager submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

**Operational  
Commencement Date**

means the date of the first requirements for bookings of air charter services sent by the Authority to the Freight Manager in accordance with Clause 7.3;

**Parent Company**

means any company which is the ultimate Holding Company of the Freight Manager and which is either responsible directly or indirectly for the business activities of the Freight Manager or which is engaged by the same or similar business to the Freight Manager. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;

**Personal Data**

has the meaning given in Schedule 7 (Data Protection);

**Prohibited Act**

means any of the following:

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

**Regulations**

means the Public Contracts Regulations 2015;

**Regulatory Bodies**

means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with

in the Agreement and “**Regulatory Body**” shall be construed accordingly;

<b>Relevant Requirements</b>	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;
<b>Relevant Tax Authority</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Freight Manager is established;
<b>Replacement Services</b>	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services, whether those services are provided by the Authority internally and/or by any third party;
<b>Replacement Freight Manager</b>	means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority;
<b>Requests for Information</b>	means a request for information or an apparent request relating to the Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
<b>Services</b>	means the services to be provided by the Freight Manager to the Authority as referred to in Schedule 2 (Services);
<b>Sites</b>	means any premises (including the Authority Premises, the Freight Manager's premises or third party premises) from, to or at which: <ul style="list-style-type: none"><li>a) the Services are (or are to be) provided; or</li><li>b) the Freight Manager manages, organises or otherwise directs the provision or the use of the Services;</li></ul>
<b>SOP Manual</b>	means any Authority standard operating procedures manual as provided to the Freight Manager by the Authority from time to time;
<b>Specific Change in Law</b>	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Services is not reasonably foreseeable at the Start Date;
<b>Standards</b>	means any: <ul style="list-style-type: none"><li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Freight Manager would reasonably and ordinarily be expected to comply with;</li><li>b) standards detailed in the specification in Schedule 2 (Services);</li></ul>

- c) standards detailed by the Authority in the Order Form or agreed between the Parties from time to time;
- d) relevant government codes of practice and guidance applicable from time to time;

**STD**

means the scheduled time of departure of any Charter Flight;

**Sub-Contract**

means any contract or agreement (or proposed contract or agreement), other than the Agreement, pursuant to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

**Sub-Contractor**

means any person other than the Freight Manager, who is a party to a Sub-Contract and the servants or agents of that person;

**Tender**

means the tender submitted by the Freight Manager to the Authority in respect of this Agreement as appended to this Agreement at Schedule 16 (Freight Manager's Tender);

**Term**

means the Initial Term and any Extended Term;

**Variation**

has the meaning given in Clause 17 (Change);

**Worker**

any one of the Freight Manager Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the Services; and

**Working Day**

means any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by Parties in the Agreement.



## **Schedule 2**

### **Services**

# Attachment 3A – Service Specification (Lot A – Air Charter Services)

## Contents

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### 1. DEFINITION OF TERMS

In this schedule the following definitions shall apply:

“Authority” means the Department for Health and Social Care

“End-to-end” means that the consignment shall be collected by the service provider from the consignor despatch point (the producer or origin warehouse) and delivered to the specified consignee delivery point (e.g. warehouse)

“Handling requirements” means product-specific criteria (for example environmental conditions) which must be adhered to during the handling and transportation process.

“LFD” means Lateral Flow Device Covid-19 rapid test kit.

“Managed Service” means a fully transparent outsourced service where the supplier is responsible for the delivery of the end-to-end logistics service and operational, financial and quality reporting to the Authority.

“PPE” means Personal Protective Equipment required for the protection of healthcare professionals and other personnel from the Covid-19 virus.

“Producers” means the manufacturers commissioned by the Authority to produce the goods purchased by the Authority, including but not limited to, PPE and T&T goods or other medical products.

“Test and Trace” or “T&T” means NHS Test and Trace which is a government-funded service in England, established in 2020 to track and help prevent the spread of COVID-19. It is run by the UK Health Security Agency.

“UK” The territories of Great Britain and Northern Ireland including Jersey, Guernsey, Gibraltar and Isle of Man.

“Wraparound services” means all other aspects of the end-to-end Air Charter solution apart from the actual Air Charter movement. This includes but is not limited to ground handling and customs services.

## 2. CONTEXT

- 2.1 Since the outbreak of the COVID-19 pandemic, the Authority has managed international freight to support the urgent movement of medical products and consumables on an ex works basis to ensure critical supplies are available to protect and preserve life.
- 2.2 In December 2020 the Authority launched ITT C15725 and awarded five separate contracts for a multi-modal freight solution, including Lot 1 for Air Charter services.
- 2.3 The Authority expects to have continued requirements to move high volumes of Lateral Flow Devices (LFDs) as a result of the scaling up of the UK's mass population testing programme and increased demand for Lateral Flow Devices (LFDs).
- 2.4 There is also a need for the Authority to build capability to support the urgent movement of other medical products by Air Charter to meet further requirements which may arise, driven by the response to COVID-19 or other events.
- 2.5 The Authority therefore needs to establish another contract for Air Charter services in order to ensure the continued availability of multi-modal freight solutions to support the urgent international movement of goods including, but not limited to, COVID-19 test kits.
- 2.6 The scope of the contract awarded to the successful bidder will not be limited to delivery to the UK and will allow for any international flight route.
- 2.7 This procurement covers international Air Charter activity expected to cover September 2021 (being the point at which the recently awarded ITT C15725 Lot 1 contract is currently forecast to have been exhausted) to [REDACTED] with a maximum value of [REDACTED] and potential to extend for up to a further year where the Contract value has not been exhausted within the first [REDACTED].
- 2.8 Air Charter services in this Lot refers only to the management of charter bookings. All wraparound services required as part of the end-to-end solution including ground handling, customs services and further freight movement will be delivered by the Authority's appointed Air Freight and Ground Handling Services provider under the contract awarded in Lot 2 in ITT C15725.

## 3. OBJECTIVES

- 3.1 The objectives of this contract are to:
- 3.1.1 Support the continued provision of rapid mass testing as part of the T&T programme to enable a return towards normal life for the wider population.
  - 3.1.2 Secure a resilient international Air Charter end to end solution to ensure the Authority has ongoing available freight capacity to support continuity of supply of other medical products as required.
  - 3.1.3 Ensure that the Authority can access reliable and secure global Air Charter solutions rapidly as needed on terms representing value for money in the context of a volatile market.
- 3.2 This supports the supply work stream for key products and equipment as part of the Authority's response to the COVID-19 pandemic and enable it to meet the four strategic objectives:
- Keep people safe
  - Protect our NHS
  - Minimise deaths

- Protect the adult social care system

3.3 This Lot is part of a multi-lot procurement where each lot relates to a specific mode of transport or provision of logistics services. The Authority will select the most appropriate mode for each specific requirement that arises during the contract period. For this reason, the Authority will require the successful supplier for this Lot to cooperate with other supplier(s) where required in practice.

#### 4. SUPPLIER REQUIREMENTS – AIR CHARTER SERVICES

4.1 The Authority is seeking an organisation to provide outsourced managed services for international Air Charters. The successful organisation's primary objective is to manage the end to end process of securing and booking Air Charters to be utilised by the Authority and their suppliers, not including wraparound services. The successful organisation will hand over the charter booking to the Authority's appointed air freight and ground handling service provider. Both providers will work to the Authority's given schedule to optimise movement of products by international freight.

4.2 The successful organisation will be required to mobilise a fully staffed operation, running on a 24/7/365 basis (if required), working in direct contact with the Authority's staff and other third party organisations as required.

4.3 The contract period is expected to be from [REDACTED] (but to note this is subject to change) with a possible extension of up to [REDACTED] while the Contract value has not been exhausted. The successful organisation could therefore be required to have mobilised their solution by [REDACTED]. The option to extend for up to a further [REDACTED] will be in multiples of [REDACTED]. The Authority will inform the Successful Supplier no less than 3 months before end of contract term on any decision to extend the Contract.

4.4 The successful organisation will need to have the ability to deliver requirements for this contract in any location internationally. Specific location and volume requirements will be detailed by the Authority throughout the Contract period.

4.5 The successful organisation will be required to adopt open book accounting for Air Charter activities and demonstrate active cost management with a clear and streamlined weekly invoicing process.

4.6 General requirements of this contract

4.6.1 In addition to the Air Charter specific requirements, the following requirements will apply across all logistics operations. For the Air Charter services supplier (this lot), each of the below must be considered in conjunction with the Authority's appointed Air Freight and Ground Handling Services provider offering wraparound services for this solution.

4.6.1.1 Collaboration with other parties contracted by the Authority including coordination of services when required.

4.6.1.2 Scalability and flexibility of service volumes and routes over the contract period, demonstrating responsiveness to changing requirements as a result of the Authority's evolving dynamic response to the pandemic, in addition to specific 'spot' transport needs as and when they arise.

4.6.1.3 Potential ad-hoc international air charter requirements outside the scope of the specific processes outlined within this ITT may be requested of the successful organisation by the Authority. These would be subject to a commercial discussion between the Authority and the successful organisation in the context of rate cards submitted as part of this ITT and the international freight market at the time.

- 4.6.1.4 Any product-specific handling requirements for other medical products requiring international freight movements would be confirmed in advance by the Authority.
- 4.6.1.5 Regular and transparent communication and collaboration with the Authority and its agents including accurate and relevant data and reporting as required.
- 4.6.1.6 Successful interface with other parties to the overall solution, including for example manufacturers, contract managers and end users where applicable.
- 4.6.1.7 Where applicable, compliance with relevant industry standards and regulatory requirements specific to the handling of medical supplies.

#### 4.7 Service Requirements

- 4.7.1 Note that for COVID-19 test kits, specific handling requirements may apply and that there is a requirement to facilitate the required UK laboratory sample testing of each batch of products shipped in collaboration with the Authority's appointed Air Freight and Ground Handling Services supplier from ITT C15725 and the Lot D Warehousing Services supplier from this procurement as required.
- 4.7.2 The below table outlines the anticipated process flows and associated requirements for the continuing Air Charter services, and details the typical process stages the successful organisation will be required to manage and deliver. These requirements are indicative of the services required under this Contract and may be subject to change throughout Contract period.

#### Managed Air Charter Services Solution

Stage Gate	Process	Description
A	Booking Management	<ul style="list-style-type: none"><li>• Ensure that all details are available to facilitate effective management of individual air charter assignment bookings.</li><li>• Search for and identify best market pricing for air charters.</li><li>• Execute, and manage booking of air charters, including peripheral details to meet requirements of the Authority, taking care to include provisions for special instructions where these are required.</li><li>• Ensure, through collaboration the Authority's appointed Air Freight and Ground Handling Services supplier, that all details (including time and chosen route) of air charter booking are manageable by the Authority's appointed "wraparound" services supplier. Undertake due diligence to ensure appropriate licences are in place, safety standards are adhered to, relevant regulations are met, and relevant paperwork has been completed.</li><li>• The Authority expects the bidder to deliver a charter booking solution in line with the following: all outward legs (positioning flights) will be empty of cargo and direct flights to the airport of contracted departure; all outward legs must minimise any potential for operational risks or delays to the Authority's departure schedule; all return legs (carrying the Authority's cargo) will be direct flights to the airport of contracted arrival. While the Authority accepts that there could be circumstances leading to an exception to the solution specified above, the Authority instructs bidders that no deviations from this solution will be acceptable to the Authority, unless specifically raised and approved in writing <u>by flight</u> as a specific exception</li></ul>

B	Air freight liaison	<ul style="list-style-type: none"> <li>Ensure all details of air charter booking, as well as details required to manage booking, are shared in a timely manner with the Authority's appointed Air Freight and Ground Handling Services supplier.</li> </ul>
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4.8 The Authority's appointed Air Freight and Ground Handling Services supplier will provide all other end-to-end freight management services apart from management of the air charter, including ground handling and customs services.

#### 4.9 Commercial Management

4.9.1 Given the significant current and expected future volatility in the air charter market, the successful organisation will be required to run an 'open book' process for the booking of international air charter capacity. Under this process, the successful organisation will be expected to demonstrate to the Authority, upon request, how value for money has been achieved utilising their experience and expertise in active cost management in the market. The Authority will conduct regular market benchmarking of air charter costs incurred by the successful organisation. The successful organisation will be paid a fixed sum management fee for this service per charter, which forms the required commercial response to this Lot. For further details on the mechanics of the management fee see Schedule 4 of this Contract and for mechanics of the benchmarking process please see Schedule 9 Benchmarking and clauses 7.4 and 17 of the draft Contract.

4.9.2 The successful organisation will be required to meet the following commercial obligations throughout delivery of the services:

4.9.2.1 The prices submitted by the successful organisation within the commercial response to this ITT will apply to all elements within the air charter process for the first [REDACTED] of this contract. Contract pricing reviews will be held annually on the anniversary of the contract date.

4.9.2.2 Adopt 'open book' accounting in order to be able to provide regular updates to the Authority to demonstrate active cost management and value for money achieved through air charter bookings made by the supplier organisation.

4.9.2.3 Preparation of itemised weekly invoices in PDF format to the Authority together with full supporting documentation. Including but not limited to:

- (a) Date and cost of services delivered
- (b) Origin
- (c) Destination
- (d) Flight number

4.9.2.4 Regular reporting to the Authority on performance and outcomes across all key operational, supervisory and quality management aspects of the services being delivered under this contract.

4.9.2.5 Regular management information and reporting of volumes, costs and performance against KPIs defined by the Authority. Specific KPIs related to the requirements listed in this document are detailed below. Please see Schedule 3 - Performance Standards and KPIs of the draft Contract for further details.

No.	KPI Name	Measure Description	Measure Calculation	Weighting	KPI Minimum Target
1					

**Schedule 3**  
**Performance Standards and Key Performance Indicators**

**1. Definitions**

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

<b>Actual KPI Performance</b>	means the percentage of the Measure Calculation achieved by the Freight Manager in the previous Month;
<b>Best Price Available</b>	the lowest price for air charters obtained by the Authority or its duly authorised representatives each Month in a binding quotation from a third party air carrier (or as published in industry market data from a recognised independent third party provider of such information) so as to meet the Authority's air freight requirements for the transportation of goods by air pursuant to this Agreement for the following Month for the same volume of air freight requirements as has been notified by the Authority to the Freight Manager earlier in that Month, from the same airport of origin to the same final destination in the United Kingdom (but not necessarily utilising the same air frames, routes or destination airport in the United Kingdom);
<b>Contractual KPIs</b>	means the key measures of the Freight Manager's performance of the Services to be monitored by the Authority throughout the Term, as detailed in Annex 1 to this Schedule 3;
<b>Critical Performance Failure</b>	means a failure to achieve the KPI Minimum Target over either:  a) [REDACTED]; or b) [REDACTED] period.
<b>KPI</b>	means the:  a) Contractual KPIs; and b) Operational KPIs;
<b>KPI Failure</b>	means a failure to meet the KPI Minimum Target in respect of any Contractual KPI.
<b>KPI Minimum Target</b>	shall be the minimum standards of performance to be achieved by the Freight Manager as set out against the relevant Contractual KPI.
<b>Measure Calculation</b>	shall be the method for calculating performance of the Measure Description as set out against the relevant Contractual KPI in Annex 1 to this Schedule 3;



<b>Measure Description</b>	means the specific circumstances arising in the provision the Services by the Freight Manager that will be measured by the Authority for each of the Contractual KPIs;
<b>Operational KPIs</b>	means such measures of the Freight Manager's operational performance of the Services as may be agreed between the Parties from time to time and which are to be monitored by each Party throughout the Term (but to which, for the avoidance of doubt, the provisions of Paragraph 7 of this Schedule 3 does not apply);
<b>Operational KPI Report</b>	means the report on performance against the Operational KPIs to be prepared by the Freight Manager pursuant to Paragraph 5 of this Schedule 3;
<b>Performance Monitoring Report</b>	has the meaning given in Paragraph 5.1;
<b>Performance Review Meeting</b>	has the meaning given in Paragraph 6.1;
<b>Repeat Performance Failure</b>	means a KPI Failure, of the same Contractual KPI, that has occurred over: <ul style="list-style-type: none"> <li>a) [REDACTED], or</li> <li>b) [REDACTED] period.</li> </ul>
<b>Rectification Notice</b>	has the meaning given in Paragraph 7.6; and
<b>Service Rectification Plan</b>	has the meaning given in Paragraph 7.1.

## 2. Introduction

- 2.1 Throughout the duration of this Agreement, the Freight Manager shall provide the Services so as to meet or exceed the KPIs and, without prejudice to the Authority's rights under this Schedule or elsewhere in the Agreement, promptly take such corrective action as may be reasonably necessary in the event of failure to meet those standards.
- 2.2 This Schedule sets out the required standards and the consequences and remedies for below standard performance.
- 2.3 The Freight Manager agrees and acknowledges that the remedies referred to in this Schedule, for service failure shall be cumulative, non-exclusive and shall be without prejudice to any other right or remedy available to the Authority.
- 2.4 The Freight Manager shall ensure that it has appropriate systems and procedures in place in order to capture and report on performance in respect of each KPI as set out in this Schedule 3.

## 3. KPI Changes

- 3.1 Any changes to the KPIs whether changes to the KPI Minimum Target for any of the Contractual KPIs or the removal of KPIs or the addition of new KPIs shall be treated as a formal Variation and effected in accordance with the process set out in the Agreement.

## 4. Measurement of KPIs

- 4.1 The Authority shall measure the Freight Manager's performance against the Contractual KPIs on a Monthly basis in accordance with this Schedule 3.

- 4.2 The Authority shall calculate the Freight Manager's Actual KPI Performance for each Contractual KPI with reference to the Measure Calculation for that Contractual KPI and shall measure such performance against the KPI Minimum Target for that KPI.
- 4.3 The Freight Manager shall measure and report in writing to the Authority on the Freight Manager's performance against the Operational KPIs on a Monthly basis.

## 5. Performance Monitoring Report

- 5.1 Within 7 days of the end of each Month, the Authority shall provide a written report to the Freight Manager which summarises the performance by the Freight Manager against each of the KPIs as more particularly described in Paragraph 5.2 (the "**Performance Monitoring Report**").
- 5.2 The Performance Monitoring Report shall be in such format as determined by the Authority and contain at least the following information:

### Information in respect of the Month just ended

- 5.2.1 for each KPI, the actual performance achieved over the Month, and that achieved over the previous 3 Months;
- 5.2.2 a summary of all KPI Failures that occurred during the Month and whether any of these are:
  - (a) Repeat Performance Failures; or
  - (b) a Critical Performance Failure;
- 5.2.3 any other relevant particulars of any aspects of the Freight Manager's performance which fail to meet the requirements of this Agreement; and
- 5.2.4 such other information regarding the Freight Manager's performance as the Authority determines relevant from time to time;

### Information in respect of previous Months

- 5.2.5 a rolling total of the number of KPI Failures and Repeat Performance Failures that have occurred since the Commencement Date.

### Operational KPI Report

- 5.3 Within 7 days of the end of each Month and in any event prior to the Performance Review Meeting, the Freight Manager shall provide a written report to the Authority Representative in a format determined by the Authority for review and discussion at the next Performance Review Meeting which summarises the performance by the Freight Manager in the previous Month against each of the Operational KPIs (the "**Operational KPI Report**").

### Additional information

- 5.4 The Freight Manager shall provide to the Authority such documentation as the Authority may reasonably require in order to verify the level of the performance by the Freight Manager outlined in the Performance Monitoring Reports and Operational KPI Reports.

### Service Failure and Plans for Improvement

- 5.5 Within 10 days of the end of each Month and in any event prior to the Performance Review Meeting the Freight Manager shall provide the Authority with details of:
  - 5.5.1 any previous KPI Failures remaining outstanding and progress in resolving them;
  - 5.5.2 in the case of a previous Performance Failure, whether or not a Service Rectification Plan has been agreed; and
  - 5.5.3 where a Service Rectification Plan has been agreed, a summary of the Freight Manager's progress in implementing that Service Rectification Plan;
  - 5.5.4 the status of any outstanding Service Rectification Plan actions or processes;
  - 5.5.5 for any Repeat Performance Failures or, actions taken by either party pursuant to Paragraphs 7.1 of this Schedule 3; and

- 5.5.6 such other details as the Authority may reasonably require from time to time, the "**Rectification Status Report**".

## 6. Performance Review Meetings

- 6.1 The Parties shall attend a meeting to discuss Performance Monitoring Reports, Operational KPI Reports and Rectification Status Reports and to agree any proposed Service Rectification Plans ("**Performance Review Meetings**") on a Monthly basis and by no later than the seventeenth day of each Month. The Performance Review Meetings shall:
- 6.1.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Authority and the Freight Manager issuing the Operational KPI Reports at such location and time (within normal business hours) as the Authority shall reasonably require;
  - 6.1.2 be attended by the Freight Manager's Representative and the Authority's Representative; and
  - 6.1.3 be fully minuted by the Freight Manager and the minutes will be circulated by the Freight Manager to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting.

## 7. KPI Failure

- 7.1 If there is a KPI Failure in any Month as demonstrated in the Performance Monitoring Report:
- 7.1.1 the Freight Manager shall provide such information as may be requested by the Authority and within such timescales required by the Authority, regarding the cause of the KPI Failure and any measures that the Freight Manager may be required to put in place to ensure that there is not a Repeat Performance Failure or Critical Performance KPI Failure;
  - 7.1.2 the Authority shall be entitled to require the Freight Manager to implement changes to the manner in which the Freight Manager provides the Services so as to prevent a Repeat or Critical Performance Failure, including (without limitation and by way of example) making changes to Key Personnel or Subcontractors; and
  - 7.1.3 the Freight Manager shall prepare a formal written rectification plan to satisfy the Authority that the Freight Manager is taking or will immediately take all necessary steps to improve future performance and minimise the risk of subsequent KPI Failures ("**Service Rectification Plan**").
- 7.2 The Service Rectification Plan shall at a minimum contain the following information:
- 7.2.1 notification of the scale of the problem and the steps that the Freight Manager proposes to take, or is taking to rectify or improve its performance including all failures to perform the Services in accordance with the standards set out in the KPIs; and
  - 7.2.2 a statement as to how success in implementing the Service Rectification Plan will be measured; and
  - 7.2.3 a statement as to the timescales within which the Service Rectification Plan will be implemented; and
  - 7.2.4 such other information as may reasonably be required by the Authority.
- 7.3 The Service Rectification Plan shall be signed by a duly authorised representative of the Freight Manager and submitted to the Authority for approval by no later than 3 days following the date of the Authority's submission of the Performance Management Report showing the Freight Manager's Performance Failure and in any event prior to that Month's Performance Review Meeting.
- 7.4 The Authority shall give its approval or, if not approved, any comments on the Service Rectification Plan as soon as reasonably practicable after its submission or, if within 7 days of the date of such submission, at the next following Performance Review Meeting. Failure

to respond shall not be deemed approval. Where the Authority elects not to approve the Service Rectification Plan the Freight Manager shall make such amendments to the Service Rectification Plan as may reasonably be required by the Authority and shall re-submit the Service Rectification Plan for approval within 3 days from and including the date upon which the Authority notifies its request.

7.5 Once agreed the Freight Manager shall comply with the Service Rectification Plan in accordance with any timescales set out therein.

7.6 If:

7.6.1 the Freight Manager fails to fully implement the Service Rectification Plan in accordance with its terms (including timescales); and/or

7.6.2 there is a Repeat Performance Failure (either a further Performance Failure by the Freight Manager over the following Month or for a fourth Month in the rolling 12 Month Period),

then,

7.6.3 the Management Fee for the Month in which the Repeat Performance Failure occurs shall cease to be payable or if already paid, the Authority shall be entitled to either (at its election):

(a) deduct an amount equal to the Management Fee for the relevant Month from any Management Fee payable in any subsequent Month (and the Freight Manager shall issue a credit note for such amount);

(b) a credit note for such amount from the Freight Manager which may be applied against any other charges, costs and expenses due and payable by the Authority to the Freight Manager under this or any other Agreement; or

(c) if no further charges, costs and expenses are due and payable by the Authority to the Freight Manager against which a credit note may be applied, the Freight Manager shall pay to the Authority within 30 days of the date of the Performance Monitoring report demonstrating the Repeat Performance Failure compensation of an amount equal to the Management fee for the Month in which the Repeat Performance Failure occurs; and

7.6.4 the Authority shall be entitled to give the Freight Manager written notice that the Agreement may be terminated in the event that the Freight Manager fails to rectify the situation and there is a further KPI Failure either over the next consecutive Month or for a fourth Month in the rolling 12 Month Period (a **"Rectification Notice"**).

7.7 If the Freight Manager achieves less than the KPI Minimum Target over a third (and any subsequent) consecutive Month or fifth (and any subsequent) Month in any rolling period of 12 Months (a **"Critical Performance Failure"**):

7.7.1 where the Authority issued a Rectification Service pursuant to Paragraph 7.6.4 but the Freight Manager still failed to rectify the KPI Failure, the Authority shall be entitled to terminate the Agreement with immediate effect (or within such timescale as the Authority acting in its absolute discretion deems appropriate) on giving the Freight Manager written notice of such termination, upon expiry of which the Agreement shall be treated as having been terminated for irremediable material breach by the Freight Manager; and

7.7.2 the Management Fee for the Month in which the Critical Performance Failure occurs shall cease to be payable or if already paid, the Authority shall be entitled to either (at its election):

(a) deduct an amount equal to the Management Fee for the relevant Month from any Management Fee payable in any subsequent Month (and the Freight Manager shall issue a credit note for such amount);

- (b) a credit note for such amount from the Freight Manager which may be applied against any other charges, costs and expenses due and payable by the Authority to the Freight Manager under this or any other Agreement; or
- (c) if no further charges, costs and expenses are due and payable by the Authority to the Freight Manager against which a credit note may be applied, the Freight Manager shall pay to the Authority (within 30 days of the date of the Performance Monitoring report demonstrating the Critical Performance Failure) compensation of an amount equal to the Management fee for the Month in which the Critical Performance Failure occurs.

- 7.8 The Parties acknowledge and agree that the financial compensation paid or accruing in the event of Repeat Performance Failure or Persistent Performance Failure pursuant to the provisions of this Paragraph 7 is reasonable and proportionate in the circumstances and represents a reasonable method of price adjustment to reflect the actual value of the Services actually delivered.
- 7.9 For the avoidance of doubt, if no Services are performed in a Month as a result of the Authority not having a requirement for freight in that Month, such lack of activity shall not constitute a KPI Failure. Performance in such a Month where no Services are performed as a result of the Authority not having a requirement for freight shall be disregarded for the purposes of assessing consecutive Months of KPI Failure for a Repeat Performance Failure or a Critical Performance Failure, and the next following Month in which the Services are performed shall be treated as being "consecutive" to the last Month in which the Services were performed, however, such a Month of no activity shall not extend the rolling 12 Month period of assessment.

## Annex 1

### Contractual KPIs

[illegible]

## **Schedule 4**

### **Charges, Payment and Invoicing**

#### **1 Charges**

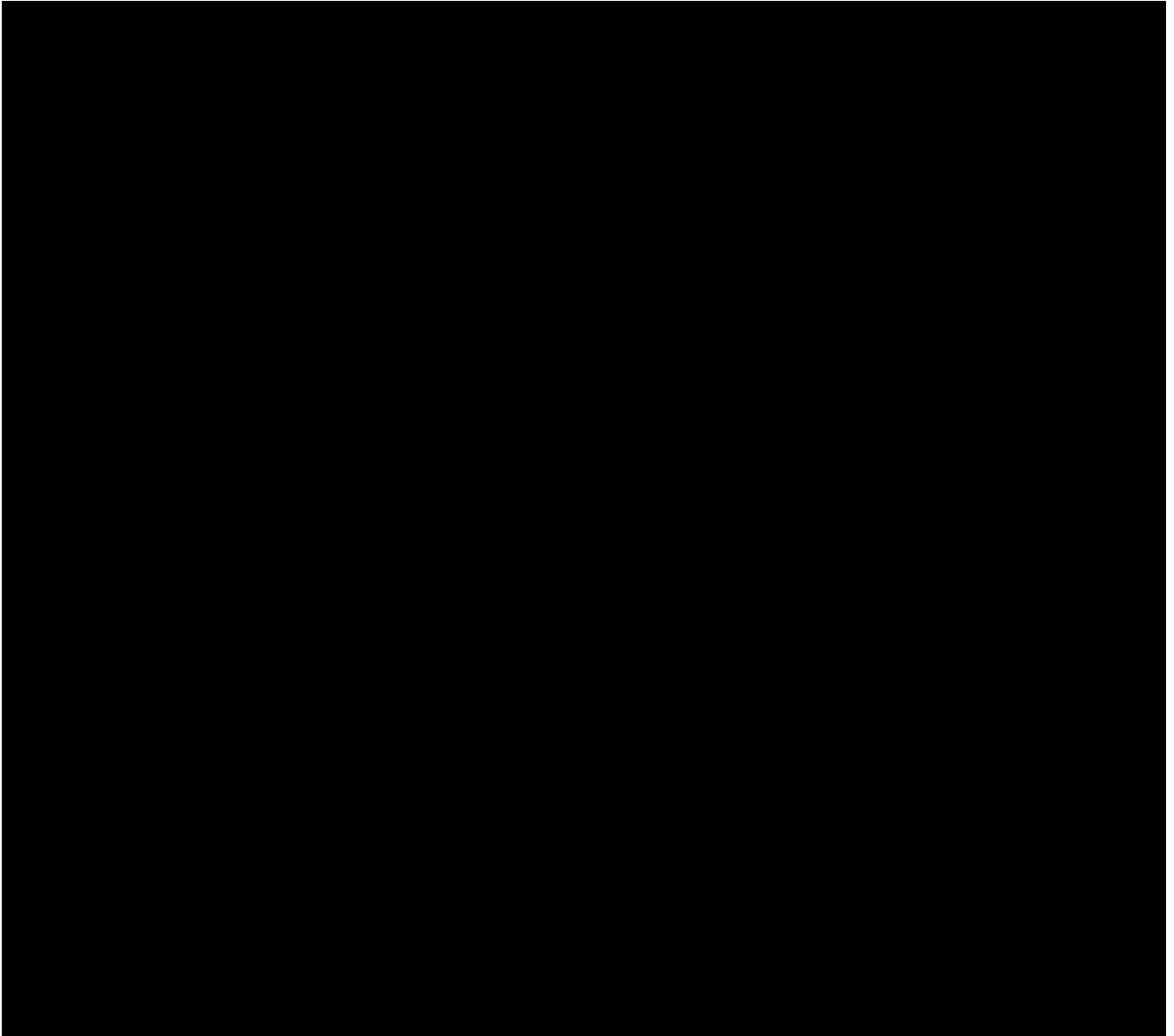
- 1.1 The Freight Manager shall invoice the Charges on a weekly basis in arrears following satisfactory completion within the previous week of that part of the Services to which the corresponding element of the Charges relate.
- 1.2 The Charges shall comprise:
  - 1.2.1 the Air Charter Management Fee;
  - 1.2.2 the Air Freight Chartering Costs; and
  - 1.2.3 any ancillary costs and charges (other than those referred to in Paragraph 1.6) properly incurred by the Freight Manager on behalf of the Authority.
- 1.3 The Freight Manager shall raise a single consolidated, itemised invoice each week for the Charges in respect of the Services provided in the previous seven (7) days in the format and with the supporting documentation prescribed by the Authority.
- 1.4 The Freight Manager shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Authority may specify):
  - 1.4.1 contains:
    - (a) all appropriate references; and
    - (b) a detailed breakdown of the Services to which the Charges relate; and
  - 1.4.2 shows separately:
    - (a) the VAT added to the due and payable Charges in accordance with Clause 18.2 and the tax point date relating to the rate of VAT shown;
    - (b) details of the exchange rate and dates applied pursuant to Clause 18.4.3 (with reference to the daily spot exchange rate against Sterling as published by the Bank of England in respect of the date that the payment is made by the Freight Manager to the relevant Carrier) to the conversion into Sterling for the purposes of invoicing the Authority of any Air Freight Chartering Costs paid to the relevant Carrier in a currency other than Sterling; and
  - 1.4.3 it is supported by any other documentation reasonably required by the Authority to substantiate the contents of the invoice.
- 1.5 The Authority shall pay all Charges in the Freight Manager's invoice that are properly due and payable within fourteen 14 days of receipt of the invoice.
- 1.6 The Freight Manager shall invoice such other amounts incurred, that it is entitled to recover from the Authority pursuant to Clause 18.1.4, on a weekly basis in arrears following satisfactory completion within the previous week of that part of the Services to which the corresponding costs relate and the Authority shall pay such amounts that are properly due and payable within seven (7) days of receipt of the Freight Manager's invoice.
- 1.7 If the Authority disputes any invoice:

- 1.7.1 the Authority shall notify the Supplier in writing promptly following receipt of the invoice, specifying the reasons for disputing the invoice;
  - 1.7.2 the Freight Manager shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
  - 1.7.3 the Authority shall pay to the Freight Manager all amounts not disputed by the Authority on the due date as set out in Paragraphs 1.4 or 1.5 (as applicable);
  - 1.7.4 the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
  - 1.7.5 if the parties have not resolved the dispute within 30 days of the Authority giving notice to the Freight Manager, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.8 The Air Charter Management Fee shall remain a fixed rate (and not, for the avoidance of doubt, a percentage of costs) for the first Agreement Year and such fixed rate shall be subject to review for any subsequent period in accordance with the provisions of this Paragraph:
- 1.8.1 if the Agreement is extended pursuant to Clause 6.2, within fourteen (14) days of the start of the tenth Month of the first Agreement Year, the Authority shall provide to the Freight Manager its estimated forecast of freight requirements for any Extended Term. For the avoidance of doubt, such forecast shall be an estimate only and shall not commit the Authority either to place such estimated volumes of freight with the Freight Manager under this Agreement or to exercise its rights to extend the Agreement beyond the Initial Term;
  - 1.8.2 with reference to the estimated forecast of requirements provided by the Authority, the Freight Manager shall prepare and submit in writing to the Authority for discussion and approval a proposed Air Charter Management Fee to apply during any Extended Term prior to the meeting of the Operational Board in the eleventh Month of the first Agreement Year;
  - 1.8.3 the Parties shall review the proposal submitted by the Freight Manager and each use their reasonable endeavours to agree the Air Charter Management Fee to take effect from the first anniversary of the Operational Commencement Date, having reference to each other's reasonable representations, justification and demonstration of cost variances (wherever possible with reference to objective market data) for any revised Air Charter Management Fee; and
  - 1.8.4 in the event that the Parties cannot agree the Air Charter Management Fee to apply during any Extended Term prior to the end of the Initial Term and the Authority has nonetheless exercised its option to extend this Agreement, the Air Charter Management Fee applicable in the first Agreement Year shall continue to apply until such agreement is reached (where necessary following the Dispute Resolution Procedure) or either Party terminates this Agreement by giving to the other not less than ninety (90) days' notice in writing.



## **Annex**

### **Air Charter Management Fee**



## **Schedule 5**

### **Governance**

#### **1 Definitions**

In this Schedule, the following definitions shall apply:

<b>Annual Management Meeting</b>	means the Management Meeting described in Paragraph 6;
<b>Management Meetings</b>	means the Annual Management Meeting, the Quarterly Management Meeting and the Monthly Management Meeting and "Management Meeting" shall mean any of them;
<b>Monthly Management Meeting</b>	means the Management Meeting described in Paragraph 4; and
<b>Quarterly Management Meeting</b>	means the Management Meeting described in Paragraph 5.

#### **2 Management of the services**

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day level.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

#### **3 Management meetings**

##### **Establishment and structure of the Management Meetings**

- 3.1 The Management Meetings shall take place on the dates and times as notified to the Supplier by the Authority.
- 3.2 The three types of Management Meetings to take place pursuant to this Agreement shall be as follows:
  - (a) The Monthly Management Meeting;
  - (b) The Quarterly Management Meeting; and
  - (c) The Annual Management Meeting.
- 3.3 Both Parties shall ensure that appropriate resource is made available to support and facilitate the objectives of the Management Meetings such that the aims and objectives of this Agreement can be fully realised.
- 3.4 Each Party shall ensure that its required delegates for Management Meetings shall make all reasonable efforts to attend Management Meetings at which that delegate's attendance is required. If any delegate is not able to attend a Management Meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate of equivalent seniority and expertise attends the relevant Management Meeting in his/her place who (wherever possible) is properly briefed and prepared; and
  - (b) he/she is debriefed by such delegate after the Management Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Management Meeting as identified in Annex 1. The chairperson for each Management Meeting shall be responsible for:
  - (a) scheduling Management Meetings;
  - (b) setting any updates to the standing agenda for Management Meetings and circulating to all attendees in advance of such meeting;
  - (c) chairing the Management Meeting;
  - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following the Management Meeting;
  - (e) ensuring that minutes for the Management Meeting are recorded and disseminated electronically to the appropriate persons and to all Management Meeting participants within seven Working Days after the Management Meeting; and
  - (f) facilitating the process or procedure by which any decision agreed at any Management Meeting is given effect in the appropriate manner.
- 3.6 Monthly Management Meetings shall be quorate as long as at one representative from each Party is present. Quarterly Management Meetings and Annual Management Meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Management Meetings shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that its delegates to Management Meetings are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 Role of the monthly management meeting**

- 4.1 The purpose of the Monthly Management Meeting shall be to carry out operational performance review this Agreement with the following objectives:
  - (a) A contractual and management KPI performance review;
  - (b) Reviewing action plans / progress;
  - (c) Presenting and agreeing open book pricing; and
  - (d) Sharing latest forecast for current / next quarter.

For the avoidance of doubt the Monthly Management Meeting shall incorporate the Performance Review Meeting as detailed in Schedule 3 (Performance Standards and KPIs).
- 4.2 The Monthly Management Meeting shall take place on a monthly basis at the dates and time as set by the Authority.
- 4.3 The following items in relation to the Monthly Management Meeting are set out in the Annex to this Schedule:
  - (a) Format/location;
  - (b) Frequency/timing;
  - (c) Meeting inputs;

- (d) Chairperson;
- (e) Attendees – mandatory and optional;
- (f) Standing agenda;
- (g) Outputs.

## **5 Role of the quarterly management meeting**

- 5.1 Every third Monthly Management Meeting shall be incorporated into and replaced by the Quarterly Management Meeting to be held in that Month.
- 5.2 The purpose of the Quarterly Management Meeting shall be to carry out leadership performance review this Agreement with the following objectives:
  - (a) A contractual and management KPI performance review;
  - (b) Reviewing action plans / progress;
  - (c) Presenting and agreeing open book pricing;
  - (d) Sharing latest annual forecast requirements;
  - (e) The agreement of elements of the Charges in accordance with Paragraph 1 of Schedule 4 to apply in the subsequent Quarter; and
  - (f) Reviewing optimisation opportunities.
- 5.3 The Quarterly Management Meeting shall take place on a quarterly basis at the dates and time as set by the Authority.
- 5.4 The following items in relation to the Quarterly Management Meeting are set out in the Annex to this Schedule:
  - (a) Format/location;
  - (b) Frequency/timing;
  - (c) Meeting inputs;
  - (d) Chairperson;
  - (e) Attendees – mandatory and optional;
  - (f) Standing agenda;
  - (g) Outputs.

## **6 Role of the annual management meeting**

- 6.1 The purpose of the Annual Management Meeting shall be to carry out a strategic review this Agreement with the following objectives:
  - (a) Discussing and agreeing annual rate review for the fixed-price elements of the Charges (as referred to in Paragraph 1.8 of Schedule 4 (Charges, Payment and Invoicing));
  - (b) Carrying out an annual operational review; and
  - (c) Reviewing optimisation opportunities.
- 6.2 The Annual Management Meeting shall take place on an annual basis at the dates and time as set by the Authority.

6.3 The following items in relation to the Annual Management Meeting are set out in the Annex 1 (Representation and Structure of Management Meetings) to this Schedule:

- (a) Format/location;
- (b) Frequency/timing;
- (c) Meeting inputs;
- (d) Chairperson;
- (e) Attendees – mandatory and optional;
- (f) Standing agenda;
- (g) Outputs.

## **7 Contract management mechanisms**

7.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement and discuss any such risks at the Management Meetings.

7.2 The Freight Manager shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

- (a) the identification and management of risks;
- (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

## ANNEX 1: REPRESENTATION AND STRUCTURE OF MANAGEMENT MEETINGS

### Monthly Management Meeting

<b>Format / Location</b>	Local Face-to-face Meeting / Remote via Teams
<b>Frequency / Timing</b>	Every 2nd Thursday Monthly / 60 mins
<b>Attendees</b>	<p>Mandatory</p> <ul style="list-style-type: none"> <li>Contract Manager DHSC (R / D*)</li> <li>Contract Manager Supplier (I / A / P)</li> <li>Analyst DHSC (I)</li> </ul> <p>Optional</p> <ul style="list-style-type: none"> <li>Head of International Freight Operations DHSC (A / R / P)</li> <li>Commercial Lead DHSC (I / A)</li> <li>Operations Director Supplier (I / A)</li> </ul> <p>* Meeting role using the RAPID decision making methodology</p> <p>RAPID:</p> <p>I = provide <u>input</u> into a recommendation  R = <u>recommend</u> a decision or action  A – formally <u>agree</u> to a decision  D – make the <u>decision</u>, commit organisation into action  P – be accountable to <u>perform</u> a decision once made</p>
<b>Inputs</b>	Contractual and Management KPI reports, volume forecasts, stakeholder feedback, action plans
<b>Chairperson</b>	Contract Manger – Authority
<b>Standing Agenda</b>	<p>Agenda</p> <ol style="list-style-type: none"> <li>1 Review action log - 5 mins</li> <li>2 Review Contractual and Management KPIs - 20 mins</li> <li>3 Agree action plan(s) - 10 mins</li> <li>4 Review and agree open book pricing for following month - 15 mins</li> <li>5 Review updated quarterly volume forecast - 5 mins</li> <li>6 Agree actions – 5 mins</li> </ol>
<b>Outputs</b>	<p>Agreed performance against contractual KPIs</p> <p>Agreed priority actions / plans against KPIs</p> <p>Agreed open book pricing / actions</p> <p>Agreed communications / escalations (where necessary)</p>

### Quarterly Management Meeting

<b>Format / Location</b>	Local Face-to-face Meeting / Remote via Teams
<b>Frequency / Timing</b>	Every Quarter 2nd Thursday / 90 mins
<b>Attendees</b>	<p>Mandatory</p> <ul style="list-style-type: none"> <li>• Contract Manager DHSC (A / P*)</li> <li>• Contract Manager Supplier (I / A / P)</li> <li>• Head of International Freight Operations DHSC (D / R)</li> <li>• Commercial Lead DHSC (I / A)</li> <li>• Operations Director Supplier (R / A)</li> </ul> <p>Optional</p> <ul style="list-style-type: none"> <li>• Deputy Director DHSC (I / A)</li> <li>• Senior Director / COO Supplier (I / A)</li> </ul> <p>* Meeting role using the RAPID decision making methodology</p>
<b>Inputs</b>	KPI reports, volume forecasts, stakeholder feedback, action plans, optimisation recommendations
<b>Chairperson</b>	Head of International Freight Operations – Authority
<b>Standing Agenda</b>	<p>Agenda</p> <ol style="list-style-type: none"> <li>1 Review action log - 10 mins</li> <li>2 Review Quarterly Contractual and Management KPIs - 20 mins</li> <li>3 Agree action plan(s) - 10 mins</li> <li>4 Review and agree open book pricing for following month - 15 mins</li> <li>5 Review updated annual volume forecast - 10 mins</li> <li>6 Review supplier optimisation plans - 15 mins</li> <li>7 Agree actions - 10 mins</li> </ol>
<b>Outputs</b>	<p>Agreed performance against contractual KPIs</p> <p>Agreed priority actions / plans against KPIs</p> <p>Agreed open book pricing / actions</p> <p>Agreed communications / escalations (where necessary)</p> <p>Agreed improvement plans</p>

## Annual Management Meeting

Format / Location	Local Face-to-face Meeting / Remote via Teams
Frequency / Timing	Annual – December or January / 60 mins
Attendees	<p>Mandatory</p> <ul style="list-style-type: none"> <li>• Contract Manager DHSC (A / P*)</li> <li>• Contract Manager Supplier (I / A / P)</li> <li>• Head of International Freight Operations DHSC (D / R)</li> <li>• Commercial Lead DHSC (I / A)</li> <li>• Operations Director Supplier (R / A)</li> <li>• Deputy Director DHSC (I / A)</li> <li>• Senior Director / COO Supplier (I / A)</li> </ul> <p>* Meeting role using the RAPID decision making methodology</p>
Inputs	KPI reports, volume forecasts, stakeholder feedback, action plans, optimisation recommendations
Chairperson	Head of International Freight Operations – Authority
Standing Agenda	<p>Agenda</p> <ol style="list-style-type: none"> <li>1 Review Annual Contractual and Management KPIs - 15 mins</li> <li>2 Review action plan progress - 10 mins</li> <li>3 Review updated annual volume forecast - 10 mins</li> <li>4 Review annual price change proposal - 20 mins</li> <li>5 Agree actions and next steps - 5 mins</li> </ol>
Outputs	<p>Agreed performance against contractual KPIs</p> <p>Agreed priority actions / plans</p> <p>Agreed pricing / follow up actions</p> <p>Agreed next steps</p>



## **Schedule 6**

### **Key Subcontractors**

#### **1. Key Subcontractors**

- 1.1 The Freight Manager is entitled to sub-contract its obligations under this Agreement to the Key Sub-Contractors listed in the Annex 1 to this Schedule 6.
- 1.2 Where during the Term the Freight Manager wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Freight Manager shall, at the time of requesting such consent, provide the Authority with the information detailed in Paragraph 1.4. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority may reasonably withhold their consent to the appointment of a Key Sub-Contractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Services or may be contrary to the Authority's interests;
  - 1.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Sub-Contractor employs unfit persons.
- 1.3 The Freight Manager shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:
  - 1.3.1 the proposed Key Sub-Contractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any part of the Services to be provided by the proposed Key Sub-Contractor;
  - 1.3.3 where the proposed Key Sub-Contractor is an Affiliate of the Freight Manager, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Term;
  - 1.3.5 a copy of the proposed Key Sub-Contract; and
  - 1.3.6 any further information reasonably requested by the Authority.
- 1.4 The Freight Manager shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.4.1 provisions which will enable the Freight Manager to discharge its obligations under the Agreement;
  - 1.4.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
  - 1.4.3 a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Freight Manager;
  - 1.4.4 a provision enabling the Freight Manager to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
  - 1.4.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Freight Manager under the Agreement in respect of:

- (a) the data protection requirements set out in Schedule 7 (Data Protection);
- (b) the FOIA and Confidential Information;
- (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute;
- (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract; and
- (e) the conduct of audits set out in Clause 35 (Conduct of Audits);

1.4.6 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Freight Manager under the Key Sub-Contract without first seeking the written consent of the Authority.

## Annex 1

### Key Subcontractors

Key Subcontractor	Registered address

## Schedule 7

### Data Protection

#### 1. Interpretation

Unless otherwise provided or the context otherwise requires the following expressions used in this Schedule shall have the meanings set out below:

<b>Controller</b>	has the meaning given in the GDPR;
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Freight Manager under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
<b>Data Protection Impact Assessment</b>	has the meaning given in the GDPR;
<b>Data Protection Legislation</b>	<ul style="list-style-type: none"><li>(a) the GDPR and any applicable national implementing Laws as amended from time to time;</li><li>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</li><li>(c) all applicable law about the processing of personal data and privacy;</li></ul>
<b>Data Subjects</b>	has the meaning given in the GDPR;
<b>Data Subject Request</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
<b>DPA 2018</b>	means the Data Protection Act 2018;
<b>GDPR</b>	means the General Data Protection Regulation (EU) 2016/679;
<b>Joint Controllers</b>	means where two or more Controllers jointly determine the purposes and means of processing;
<b>Personal Data</b>	has the meaning given in the GDPR;
<b>Personal Data Breach</b>	has the meaning given in the GDPR;
<b>Processor</b>	has the meaning given in the GDPR;
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Processor;
<b>Protective Measures</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by

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it; and

**Sub-processor**

Means any Sub-Contractor of the Freight Manager that carries out data processing activities as part of the element of the Services for which it is sub-contracted.

**2. General**

- 2.1 The Parties shall each process Personal Data. The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Legislation. In certain circumstances, a Party may act as a "Joint Controller" or a "Controller" or a "Processor". The roles of each Party in relation to the Personal Data being processed under and in accordance with this Agreement is as set out in the tables contained at Appendix 1.
- 2.2 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Business Days' notice to the Freight Manager amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.3 To the extent that it is necessary in order to facilitate the delivery of the Services, the Authority authorises the Freight Manager to share Personal Data relating to this Agreement with other Authority appointed freight managers, provided that any such Personal Data is processed in accordance with this Schedule.

**3. Data Sharing Obligations**

- 3.1 The Parties each acknowledge and agree that they may need to process Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Service; and (f) comply with their respective obligations.
  - 3.2 Each Party shall process such Personal Data relating to each Party's representatives for the purposes set out in Paragraph 3.1 (Data Sharing Obligations) in accordance with their own privacy policies. The Parties acknowledge that they may be required to share Personal Data with their Affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Paragraph 3.1 (Data Sharing Obligations), and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
  - 3.3 Save in relation to contact Personal Data processed by the Parties in accordance with Paragraph 3.1 (Data Sharing Obligations), where and to the extent the Freight Manager is acting as a Controller (except as a Joint Controller, in which case Paragraph 3.4 shall apply), and processing Personal Data in its provision of the Services and compliance with its obligations under this Agreement the conditions set out in this Paragraph 3.3 (Data Sharing Obligations) shall apply.
    - 3.3.1 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
    - 3.3.2 Where a Party has provided Personal Data to the other Party is Confidential Information, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
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- 3.3.3 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR (to the extent that it applies) in respect of the processing of Personal Data for the purposes of this Agreement.
- 3.3.4 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Agreement;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  - (c) where it has recorded it in Part 1 of Appendix 1 to this Schedule 7 (Data Protection).
- 3.3.5 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 3.3.6 Where a Party receives a request by any Data Subject Request in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("the Request Recipient"):
- (a) the other Party shall provide any information and/or assistance as reasonable required by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other party and/or relates to the other party's processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 3.3.7 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
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- 3.3.8 Personal Data provided by one Party to the other Party may be used exclusively for the Permitted Purpose as specified in Part 1 of Appendix 1 to this Schedule 7 (Data Protection).
- 3.3.9 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Appendix 1 of this Schedule 7.
- 3.4 Where and to the extent the Freight Manager is acting as a Joint Controller with the Authority the conditions set out in this Paragraph 3.4 (Data Sharing Obligations) shall apply.
- 3.4.1 Each Party shall:
- (a) collaboratively ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow the envisaged processing in accordance with the Data Protection Legislation and for the purposes set out in the Agreement. For the purposes of this Paragraph (a) the Authority shall have the final approval and oversight as to whether it or the Freight Manager is to provide any relevant fair processing notice and/or as applicable, obtain necessary consents, on behalf of both parties;
  - (b) make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Legislation), including in relation to its use and processing of the Personal Data and comply at all times with the Data Protection Legislation;
  - (c) maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 3.4 (Data Sharing Obligations). This requirement does not apply where the Party employs fewer than 250 staff, unless:
    - (i) any of the Parties determine that the processing is not occasional;
    - (ii) any of the Parties determine the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
    - (iii) any of the Parties determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects;
  - (d) work together (acting reasonably and in good faith) in the preparation of any Data Protection Impact Assessment prior to commencing any processing;
  - (e) where the Personal Data has been transmitted by it, or is in its possession or control, ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (f) subject to Paragraph 3.4.2 (Data Sharing Obligations) notify the other promptly if it:
    - (i) receives a Data Subject Request (or purported Data Subject Request);
    - (ii) receives a request to rectify, block or erase any Personal Data;
    - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
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- (iv) receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data processed under this Agreement; or
  - (v) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation.
- 3.4.2 Each Party's obligation to notify under Paragraph 3.4.1(f) (Data Sharing Obligations) shall include the provision of further information in phases, as details become available. The Authority shall determine and confirm to the Freight Manager whether it or the Freight Manager shall be the primary point of contact and responder to the request, complaint or communication received pursuant to Paragraph 3.4.1(f) (Data Sharing Obligations) and the parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects. Where the Authority:
  - (a) designates the Freight Manager as the primary point of contact, the Freight Manager shall provide updates and further information to the Authority, including (where directed by the Authority) allowing the Authority to have final oversight and approval of any response, prior to such response being released to the relevant party;
  - (b) designates itself as the primary point of contact, the Freight Manager shall provide all support as necessary within the timescales directed by the Authority, including providing all Personal Data held by the Freight Manager in respect of the request, complaint or communication received to the Authority as soon as practicable and in any event within five (5) days, or as otherwise agreed by the parties acting reasonably and in good faith.
- 3.4.3 Before further sharing the Personal Data with a third party (including using a processor or any Sub-processor to process any Personal Data related to this Agreement), the Freight Manager must:
  - (a) notify the Authority in writing of the intended third party (including any Processor and/or Sub-processor) and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written Agreement with the third party (including any Processor and/or Sub-processor) which give effect to the terms set out in this Schedule (as applicable); and
  - (d) provide the Authority with such information regarding the third party as the Authority may reasonably require.
- 3.4.4 The Freight Manager shall remain fully liable for all acts or omissions of any third party to which it transfers the relevant Personal Data.

#### **4. Processor Obligations**

For the purposes of this Paragraph 4 (Processor Obligations), a reference to the "Controller" shall be a reference to the Authority as the context dictates.

- 4.1 Where and to the extent the Freight Manager is acting as a Processor, the conditions set out in this Paragraph 4 (Processor Obligations) shall apply.
  - 4.2 The only processing that the Processor is authorised to do is listed in Part 2 of Appendix 1 to this Schedule 7 (Data Protection) by the Controller and may not be determined by the Processor.
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- 4.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 4.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 4.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 4.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 4.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 4.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 4.5.1 process that Personal Data only in accordance with Part 2 of Appendix 1 to this Schedule 7 (Data Protection) unless the Processor is required to do otherwise by Legislation. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by legislation;
  - 4.5.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 4.5.3 ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Part 2 of Appendix 1 to this Schedule 7 (Data Protection));
    - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (i) are aware of and comply with the Processor's duties under this Paragraph 4 (Processor Obligations);
      - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
    - (c) where Personal Data is transferred outside of the United Kingdom to a country which has not been deemed adequate for the purposes of international data
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transfers by the European Commission or the United Kingdom government in accordance with Article 45 of the GDPR, the following conditions are fulfilled:

- (i) appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) have been implemented;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (v) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Legislation to retain the Personal Data.

4.5.4 Subject to Paragraph 4.5.5 (Processor Obligations), the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data Processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or
- (f) becomes aware of a Data Loss Event.

4.5.5 The Processor's obligation to notify under Paragraph 4.5.4 (Processor Obligations) shall include the provision of further information to the Controller in phases, as details become available. The Controller shall either, at its sole election: (a) assume full control of the responses to the events set out in Paragraph 4.5.4 (Processor Obligations); or (b) direct the Processor in its response, save where the Processor is required to act quickly and solely within its internal business to minimise the impact(s) of a Data Loss Event.

4.5.6 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 4.5.4 (Processor Obligations) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
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- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event; and
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

4.5.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 4 (Processor Obligations). This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

4.5.8 The Processor shall allow for audits of its processing activity by the Controller or the Controller's designated auditor.

4.5.9 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

4.5.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written Agreement with the Sub-processor which give effect to the terms set out in this Paragraph 4 (Processor Obligations) such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

For the avoidance of doubt, for the purposes of Paragraph 4.5.10(b), the Controller consents to the Sub-processors listed in Schedule 6 (Key Subcontractors) processing Personal Data related to this Agreement.

4.5.11 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

4.5.12 The Controller may, at any time on not less than thirty (30) Business Days' notice, revise this Paragraph 4 (Processor Obligations) by replacing it with any applicable controller to processor standards or similar terms forming part of an applicable certification scheme (designated as such pursuant to Data Protection Legislation) (which shall apply when incorporated by attachment to this Agreement).

4.5.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Business

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Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 4.5.14 The Parties agree to take account of any data processing agreement or protocol issued by the Authority or Government Department which provides for the processing of Personal Data between the Authority and the Freight Manager agrees, where required, the Authority may, at any time on not less than thirty (30) Business Days' notice, amend this Agreement to ensure that it complies with any terms of such data processing agreement or protocol.

## APPENDIX 1

### Data protection particulars

#### PART 1

#### 1. Schedule of Data Sharing Particulars

This Part 1 to Appendix 1 of Schedule 7 (Data Protection) sets out the data sharing particulars to be completed by the Parties, acting reasonably and in good faith.

Description	Details
Designation of Parties	<p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>• business contact details of Freight Manager Personnel for which the Freight Manager is the Controller,</li><li>• business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Freight Manager Personnel) engaged in the performance of the Authority's duties under the Agreement) for which the Authority is the Controller,</li><li>• name and contact details (including phone number, email address, postal address) of freight handlers and/or other individuals involved in the supply chain for the transportation of the Goods and/or the delivery of the Services.</li></ul>
Permitted Purpose	<ul style="list-style-type: none"><li>• The administration of the Agreement</li><li>• The delivery of the Services by the Freight Manager</li></ul>

## PART 2

### 2. Schedule of data processing particulars

This Part 2 to Appendix 1 of Schedule 7 (Data Protection) sets out the data processing particulars to be completed by the Controller, who may take account of the view of the Processor(s), however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

- 2.1 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 2.2 Any such further instructions shall be incorporated into this schedule of data processing particulars.

Description	Details
Designation of the Parties	The Authority is the Controller and the Freight Manager is the Processor
Duration of the processing	For the Term of the Agreement
Type of Personal Data	Name, contact details (including phone number, email address, postal address)
Categories of Data Subject	Freight handlers and/or other individuals involved in the supply chain for the transportation of the Goods and/or in the delivery of the Services
Nature and purposes of the processing	For the provision of the Services by the Freight Manager

## **Schedule 8**

### **Insurance Requirements**

#### **1. Insurances**

- 1.1 The Freight Manager shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Freight Manager shall ensure that each of the Insurances is effective no later than the Effective Date.
- 1.2 The Freight Manager shall ensure that each of the Insurances are:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the expiry of termination of this Agreement.
- 1.3 The Freight Manager shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the provision of the Services and for which the Freight Manager is legally liable.
- 1.4 The Freight Manager shall by the Effective Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

#### **2. Insurance Management**

- 2.1 Without limiting the other provisions of this Agreement, the Freight Manager shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Freight Manager is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 2.2 The Freight Manager shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 2.3 Where the Freight Manager has failed to purchase or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Freight Manager to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Freight Manager.

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

### **3. Cancellation of Insurance**

- 3.1 The Freight Manager shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 3.2 The Freight Manager shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Freight Manager shall use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **4. Insurance Claims**

- 4.1 The Freight Manager shall promptly notify to insurers any matter arising from, or in relation to, this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of this Agreement, the Freight Manager shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 4.2 Except where the Authority is the claimant party, the Freight Manager shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to the Annex to this Schedule relating to or arising out of the provision of the Services on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 4.3 Where any Insurance requires payment of a premium, the Freight Manager shall be liable for and shall promptly pay such premium.
- 4.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Freight Manager shall be liable for such excess or deductible. The Freight Manager shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.



## **ANNEX**

### **Required Insurances**

The Freight Manager shall hold the following standard insurance cover from the Effective Date in accordance with this Schedule:

1. Public Liability Insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000);
2. Employers' Liability Insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000); and
3. Professional Indemnity Insurance with cover (for a single event or a series of related events and in the aggregate) of not less than two million pounds (£2,000,000).

## **Schedule 9**

### **Benchmarking**

#### **1 Definitions**

1.1 In this Schedule, the following expressions shall have the following meanings:

<b>Benchmark Review</b>	a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value;
<b>Benchmarked Services</b>	any Services included within the scope of a Benchmark Review pursuant to this Schedule;
<b>Comparable Rates</b>	the Charges for Comparable Services;
<b>Comparable Services</b>	Services that are identical or materially similar to the Benchmark Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Freight Manager shall propose an approach for developing a comparable Services benchmark;
<b>Comparison Group</b>	a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Freight Manager or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Freight Manager or which, are best practice organisations;
<b>Equivalent Data</b>	data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group;
<b>Good Value</b>	that the Benchmark Rates are within the Upper Quartile; and
<b>Upper Quartile</b>	in respect of Benchmark Rates, that based on an analysis of Equivalent Data, the Benchmark Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services.

#### **2 Benchmarking**

##### **2.1 Request for a Benchmark Review**

- 2.1.1 The Authority may, by written notice to the Freight Manager, require a Benchmark Review of any or all of the Services.
- 2.1.2 The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Commencement Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.
- 2.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmark Services are, individually and/or as a whole, Good Value.
- 2.1.4 The Services that are to be the Benchmark Services will be identified by the Authority in writing.

- 2.1.5 Upon its request for a Benchmark Review the Authority shall nominate a benchmarker. The Freight Manager must approve the nomination within ten (10) Working Days unless the Freight Manager provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Authority may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
- 2.1.6 The cost of a benchmarker shall be borne by the Authority (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Services are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Freight Manager and the relevant portion shall be reimbursed by the Authority.

## **2.2 Benchmarking Process**

- 2.2.1 The benchmarker shall produce and send to the Authority, for approval, a draft plan for the Benchmark Review which must include:
- (a) a proposed cost and timetable for the Benchmark Review;
  - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 2.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 2.2.3 The Authority must give notice in writing to the Freight Manager within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Freight Manager whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 2.2.3 shall apply to any amended draft plan.
- 2.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its approval of the draft plan.
- 2.2.5 Once it has received the approval of the draft plan, the benchmarker shall:
- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Freight Manager's professional judgment using:
    - (i) market intelligence;
    - (ii) the benchmarker's own data and experience;
    - (iii) relevant published information; and
    - (iv) pursuant to Paragraph 2.2.6 below, information from other Freight Managers or purchasers on Comparable Rates;
  - (b) by applying the adjustment factors listed in Paragraph 2.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - (c) using the Equivalent Data, calculate the Upper Quartile;

- (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 2.2.6 The Freight Manager shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Freight Manager agrees to use its reasonable endeavours to obtain information from other Freight Managers or purchasers on Comparable Rates.
- 2.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
  - (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
  - (b) exchange rates;
  - (c) any other factors reasonably identified by the Freight Manager, which, if not taken into consideration, could unfairly cause the Freight Manager's pricing to appear non-competitive.

## 2.3 **Benchmarking Report**

- 2.3.1 For the purposes of this Schedule "Benchmarking Report" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;
- 2.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to Paragraph 2.2.3, setting out its findings. Those findings shall be required to:
  - (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
  - (b) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
  - (c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Freight Manager has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.
- 2.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Authority in accordance with Clause 17 of the Agreement (Change).

## Schedule 10

### Business Continuity and Disaster Recovery

#### 1. Definitions

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

<b>BCDR Plan</b>	has the meaning given to it in Paragraph 2.1 of this Schedule;
<b>Business Continuity Plan</b>	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
<b>Disaster</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
<b>Disaster Recovery Deliverables</b>	the deliverables embodied in the processes and procedures for restoring the provision of the Services following the occurrence of a Disaster;
<b>Disaster Recovery Plan</b>	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
<b>Disaster Recovery System</b>	the system embodied in the processes and procedures for restoring the provision of the Services following the occurrence of a Disaster;
<b>Freight Manager's Proposals</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;
<b>Related Freight Manager</b>	any person who provides services to the Authority which are related to the Services from time to time; and
<b>Review Report</b>	has the meaning given to it in Paragraph 6.3 of this Schedule.

#### 2. BCDR Plan

- 2.1 At least seven (7) days prior to the Operational Commencement Date the Freight Manager shall prepare and deliver to the Authority for the Authority's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the Freight Manager shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
  - 2.1.2 the recovery of the Goods and Services in the event of a Disaster
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
  - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Freight Manager, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan as soon as possible. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

#### **3.1 Section 1 of the BCDR Plan shall:**

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any goods and/or services provided to the Authority by a Related Freight Manager;
- 3.1.3 contain an obligation upon the Freight Manager to liaise with the Authority and any Related Freight Managers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Authority and any of its other Related Freight Manager in each case as notified to the Freight Manager by the Authority from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
  - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
  - (b) identification of any single points of failure within the provision of the Services and processes for managing those risks;
  - (c) identification of risks arising from the interaction of the provision of the Services with the Goods and any goods and/or services provided by a Related Freight Manager; and
  - (d) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Freight Manager (and any Subcontractors) and for the Authority;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Authority as required by the Authority to inform decisions in support of the Authority's business continuity plans.

#### **3.2 The BCDR Plan shall be designed so as to ensure that:**

- 3.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
- 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
- 3.2.4 it details a process for the management of disaster recovery testing.

#### **3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of Services.**

#### **3.4 The Freight Manager shall not be entitled to any relief from its obligations under the Key Performance Indicators (KPIs) or Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Freight Manager of this Agreement.**

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of the Services remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the Services; and
  - 4.1.2 the steps to be taken by the Freight Manager upon resumption of the provision of the Services in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of the Services;
  - 4.2.2 set out the Goods and any other goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services;
  - 4.2.3 specify any applicable KPIs with respect to the provision of the services set out in the Business Continuity Plan and details of any agreed relaxation to the KPIs or service levels in respect of the provision of the Services (or any element thereof) during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

#### **5. Disaster Recovery (Section 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Freight Manager ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Freight Manager's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
  - 5.2.1 loss of access to the Authority Premises;
  - 5.2.2 loss of utilities to the Authority Premises;
  - 5.2.3 loss of the Freight Manager's helpdesk or IT Systems;
  - 5.2.4 loss of a Sub-Contractor;
  - 5.2.5 emergency notification and escalation process;
  - 5.2.6 contact lists;
  - 5.2.7 staff training and awareness;
  - 5.2.8 BCDR Plan testing;
  - 5.2.9 post implementation review process;
  - 5.2.10 any applicable KPIs with respect to the provision of the disaster recovery services and details of any agreed relaxation to the KPI's or service levels in respect of the provision of the Services during any period of invocation of the Disaster Recovery Plan;
  - 5.2.11 details of how the Freight Manager shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.2.12 access controls to any disaster recovery sites used by the Freight Manager in relation to its obligations pursuant to this Schedule; and
  - 5.2.13 testing and management arrangements.

## **6. Review and changing the BCDR Plan**

### **6.1 The Freight Manager shall review the BCDR Plan:**

- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
- 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and
- 6.1.3 where the Authority requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Freight Manager shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Freight Manager shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Freight Manager shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

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

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

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

### **6.5 The Freight Manager shall as soon as is reasonably practicable after receiving the approval of the Freight Manager's Proposals effect any change in its practices or procedures necessary so as to give effect to the Freight Manager's Proposals. Any such change shall be at the Freight Manager's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.**

## **7. Testing the BCDR Plan**

### **7.1 The Freight Manager shall test the BCDR Plan:**

- 7.1.1 regularly and in any event not less than once in every contract year;
- 7.1.2 in the event of any major reconfiguration of the Services;
- 7.1.3 at any time where the Authority considers it necessary (acting in its sole discretion).

### **7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Freight Manager written notice and the Freight Manager shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Freight Manager's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Freight Manager's costs of that failed test shall be borne by the Freight Manager.**

### **7.3 The Freight Manager shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority.**



- 7.4 The Freight Manager shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Freight Manager shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Freight Manager's proposals for remedying any such failures.
- 7.6 Following each test, the Freight Manager shall take all measures requested by the Authority to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Freight Manager, at its own cost, by the date reasonably required by the Authority.
- 8. Invoking the BCDR Plan**
- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Freight Manager shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Freight Manager shall invoke or test the BCDR Plan only with the prior consent of the Authority.
- 9. Circumstances beyond your control**
- 9.1 The Freight Manager shall not be entitled to relief under Clause 38 (Force Majeure) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

## **Schedule 11**

### **Dispute Resolution**

#### **1. Definitions**

1.1 In this Schedule 11, the following definitions shall apply:

<b>CEDR</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>Counter Notice</b>	has the meaning given to it in paragraph 6.2 of this Schedule 11;
<b>Expert</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 11;
<b>Mediation Notice</b>	has the meaning given to it in paragraph 3.2 of this Schedule 11; and
<b>Mediator</b>	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 11.

#### **2. Introduction**

2.1 If a Dispute arises then:

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

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Schedule 11, the reason why.

2.3 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 the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Schedule 11, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Schedule 11);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Schedule 11); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule 11) or litigation (in accordance with Clause 51 of this Agreement (Governing Law and Jurisdiction)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule 11) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule 11.
- 2.6 In exceptional circumstances where the use of the times in this Schedule 11 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
- 2.7.2 in paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### **3. Commercial Negotiations**

- 3.1 Following the service of a Dispute Notice, the Authority and the Freight Manager shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority Representative and the Freight Manager Representative.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule 11; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule 11 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Schedule 11.

### **4. Mediation**

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Agreement.

- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## **5. Expert Determination**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
- 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
  - 5.3.5 the process shall be conducted in private and shall be confidential; and
  - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **6. Arbitration**

- 6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule 11.
- 6.2 Before the Freight Manager 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 Freight Manager requiring the Dispute to be referred to and resolved by arbitration in accordance with

paragraph 6.4 of this Schedule 11 or be subject to the jurisdiction of the courts in accordance with Clause 51 of this Agreement (Governing Law and Jurisdiction). The Freight Manager shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule 11 shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 51 of this Agreement (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Freight Manager shall not commence arbitration proceedings;
- 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule 11, the Freight Manager may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule 11 or commence court proceedings in the courts in accordance with Clause 51 of this Agreement (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule 11, the Parties hereby confirm that:

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule 11);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this 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;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

**7. Urgent Relief**

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

- 7.1.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

- 7.1.2 where compliance with paragraph 2.1 of this Schedule 11 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## **Schedule 12**

### **Exit Management**

#### **1. Definitions**

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

<b>Exit Information</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>Exit Manager</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>Replacement Services</b>	any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of the Agreement whether those services are provided by the Authority internally and/or by any third party;
<b>Termination Assistance</b>	the activities to be performed by the Freight Manager pursuant to the Exit Plan, and other assistance required by the Authority pursuant to the Termination Assistance Notice;
<b>Termination Assistance Notice</b>	has the meaning given to it in Paragraph 5.1 of this Schedule; and
<b>Termination Assistance Period</b>	the period specified in a Termination Assistance Notice for which the Freight Manager is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule.

#### **2. Exit Preparation**

- 2.1 Each Party shall appoint an Exit Manager within three (3) Months of the Commencement Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

#### **3. Assisting re-competition for Services**

- 3.1 The Freight Manager shall, on reasonable notice, provide to the Authority and/or its potential Replacement Freight Managers (subject to the potential Replacement Freight Managers entering into reasonable written confidentiality undertakings), such information (including any access) as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Freight Managers undertaking due diligence (the "**Exit Information**").
- 3.2 The Freight Manager acknowledges that the Authority may disclose the Freight Manager's Confidential Information (excluding the Freight Manager's or its Sub-Contractors' prices or costs) to an actual or prospective Replacement Freight Manager to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Freight Manager shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Authority within five

(5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services (and shall consult the Authority in relation to any such changes).

- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Freight Manager.

#### **4. Exit Plan**

- 4.1 The Freight Manager shall, within three (3) Months after the Commencement Date, deliver to the Authority an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.2 details of the processes for ensuring completion of the Services underway and delivery of any Goods that are in transit or in storage (where such delivery or storage forms part of the Freight Manager's responsibilities under this Agreement) as at the termination or expiry of the Agreement;
  - 4.3.3 details of the processes for all data transfers;
  - 4.3.4 details of any contracts which will be available for transfer to the Authority and/or the Replacement Freight Manager upon the End Date together with any reasonable costs required to effect such transfer;
  - 4.3.5 proposals for providing the Authority or a Replacement Freight Manager copies of all documentation relating to the use and operation of the Services and required for their continued use;
  - 4.3.6 proposals for the assignment or novation of services utilised by the Freight Manager in connection with the supply of the Services;
  - 4.3.7 proposals for the identification and return of all Authority Property in the possession of and/or control of the Freight Manager or any third party;
  - 4.3.8 how the Freight Manager will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
  - 4.3.9 any other information or assistance reasonably required by the Authority or a Replacement Freight Manager.
- 4.4 The Freight Manager shall:
- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - (a) every six (6) months throughout the Contract Period; and
    - (b) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan;
    - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;



- (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services (including all changes under the Variation Procedure); and
- 4.4.2 jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.
- 4.5 Only if (by notification to the Freight Manager in writing) the Authority agrees with a draft Exit Plan provided by the Freight Manager under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Freight Manager.

## **5. Obligations when the Agreement is terminated or expires**

- 5.1 The Freight Manager shall comply with all of its obligations contained in the Exit Plan.
- 5.2 Upon termination or expiry, the Freight Manager shall:
  - 5.2.1 vacate any Authority Premises;
  - 5.2.2 provide access during normal working hours to the Authority and/or the Replacement Freight Manager for up to twelve (12) Months after expiry or termination to:
    - (a) such information relating to the Services as remains in the possession or control of the Freight Manager; and
    - (b) such members of the Freight Manager Personnel as have been involved in the provision of the Services and who are still employed by the Freight Manager, provided that the Authority and/or the Replacement Freight Manager shall pay the reasonable costs of the Freight Manager actually incurred in responding to such requests for access.
- 5.3 Ensure completion of the Services underway and the safe delivery of any Goods in transit and/or storage (where such delivery or storage forms part of the Freight Manager's responsibilities under this Agreement) in accordance with the Authority's instructions.
- 5.4 Ensure the secure transfer of all data relating to the provision of the Services as reasonably required by the Authority.
- 5.5 Except where this Agreement provides otherwise, all licences and authorisations granted by the Authority to the Freight Manager in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **6. No charges**

- 6.1 Unless otherwise stated, the Authority shall not be obliged to pay for costs incurred by the Freight Manager in relation to its compliance with this Schedule.

## Schedule 13

### Key Roles and Key Personnel

[REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Schedule 14**  
**Form of Guarantee**



Government  
Legal Department

**[THE GUARANTOR]**

**and**

**[THE AUTHORITY]**

**DEED OF GUARANTEE AND INDEMNITY**

**THIS DEED** is executed as a deed and dated [Insert date of execution] (the “**Deed**”)

**BETWEEN:**

- (1) **[INSERT NAME OF THE GUARANTOR]** [a company incorporated in [England and Wales] under registered number [insert registered number] whose registered office is at [insert registered office]] **[OR]** [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the “**Guarantor**”); and
- (2) **[INSERT NAME OF THE AUTHORITY]**, [acting on behalf of the Crown] of [insert the Authority’s address] (the “**Authority**”).

together the “**Parties**” and each a “**Party**”.

**BACKGROUND:**

- A. The Authority [has awarded] a contract dated [insert date] to [insert details of the Supplier] (the “**Supplier**”) for the provision of [insert details of goods or services to be provided] (the “**Guaranteed Agreement**”).
- B. It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
- C. The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

**Definitions**

- 1.1 The following definitions apply in this Deed:

<b>"Business Day"</b>	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
-----------------------	--

<b>"Control"</b>	means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:
	(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or
	(b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;
<b>"Guaranteed Agreement"</b>	has the meaning given to it in Recital (A);
<b>"Guaranteed Obligations"</b>	has the meaning given to it in Clause 2.1(a);
<b>"Supplier"</b>	has the meaning given to it in Recital (A);
<b>"VAT"</b>	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the **"Guarantor"**, the **"Authority"**, the **"Supplier"** or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) **"assets"** includes present and future properties, revenues and rights of every description;
- (c) this **"Deed"**, or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (e) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "**including**", "**includes**", "**in particular**", "**for example**" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

## **2 GUARANTEE AND INDEMNITY**

### **2.1 The Guarantor:**

- (a) guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the "**Guaranteed Obligations**");
- (b) shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

### **2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:**

- (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or



- (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

### **3 AUTHORITY PROTECTIONS**

#### **Continuing Guarantee**

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

#### **Preservation of the Guarantor's liability**

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
  - (a) any arrangement made between the Supplier and the Authority;
  - (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
  - (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
  - (d) any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
  - (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
  - (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;

- (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

#### **Immediate demand**

- 3.3 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

#### **Deferral of rights**

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:

- (a) be subrogated to any right or security of the Authority;
- (b) claim or prove in competition with the Authority against the Supplier or any other person;
- (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
- (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
- (e) claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority under this Deed.

#### **4 VARIATION OF THE GUARANTEED AGREEMENT**

- 4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

#### **5 PAYMENT AND COSTS**

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:

- (a) without any set-off, condition or counterclaim whatsoever; and
- (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.

- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
- (b) the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.

- 5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.

- 5.4 The Guarantor shall pay interest on any amount due under this Deed 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.

- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:

- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
- (b) any discharge or release of this Deed.

## **6 CONDITIONAL DISCHARGE**

- 6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

## **7 REPRESENTATIONS AND WARRANTIES**

- 7.1 The Guarantor represents and warrants to the Authority that:
  - (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
  - (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
  - (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
  - (d) it has been duly authorised to enter into this Deed;
  - (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;

- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

## **8 ASSIGNMENT**

- 8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.

## **9 VARIATION**

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

## **10 DEMANDS AND NOTICES**

- 10.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:

- (a) For the Attention of [insert details]
- (b) [Address of the Guarantor in England and Wales]

or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.

10.2 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

10.3 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

10.4 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

## **11 ENTIRE AGREEMENT**

11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

## **12 WAIVER**

12.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other 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 such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

### **13 SEVERANCE**

- 13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

### **14 THIRD PARTY RIGHTS**

- 14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

### **15 GOVERNING LAW AND JURISDICTION**

- 15.1 This Deed 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.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the

Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.]

Executed as a deed by [insert the name of the Guarantor ] acting by [insert name of Director] a director, in the presence of a witness:

.....  
[Signature of Witness]

.....  
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....



## **Schedule 15**

### **MOD Terms**

#### **1 Definitions**

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

<b>MOD Site</b>	shall include any of Her Majesty's Ships or Vessels and Service Stations; and
<b>Officer in charge</b>	shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

#### **2 Access to MOD sites**

- 2.1 The Authority shall issue (or procure issue of) passes for those representatives of the Freight Manager who are approved for admission to the MOD Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority (or the MOD, as applicable) and shall be surrendered on demand or on completion of the provision of the Services (which may be the delivery of Goods).
- 2.2 The Freight Manager's representatives when employed within the boundaries of a MOD Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of staff at that MOD Site.
- 2.3 When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 2.4 The Freight Manager shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be provided by the Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At MOD Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Freight Manager Personnel for messing purposes shall be at the discretion of the Officer in charge. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Authority and shall be obtained by the Freight Manager from the Officer in charge. Such certificate shall be presented to the Authority with other evidence relating to the costs of this Agreement.
- 2.5 Where the Freight Manager Personnel are required under this Agreement to join or visit a Site overseas (other than in the usual course of the provision of the Services) transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. When such transport is not available within a reasonable time, or in circumstances where the Freight Manager wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Freight Manager shall make its own transport arrangements. The Authority shall reimburse the Freight Manager's reasonable costs for such transport of the Freight Manager Personnel on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Freight Manager Personnel locally overseas which is necessary for the purpose of this Agreement shall be provided

wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

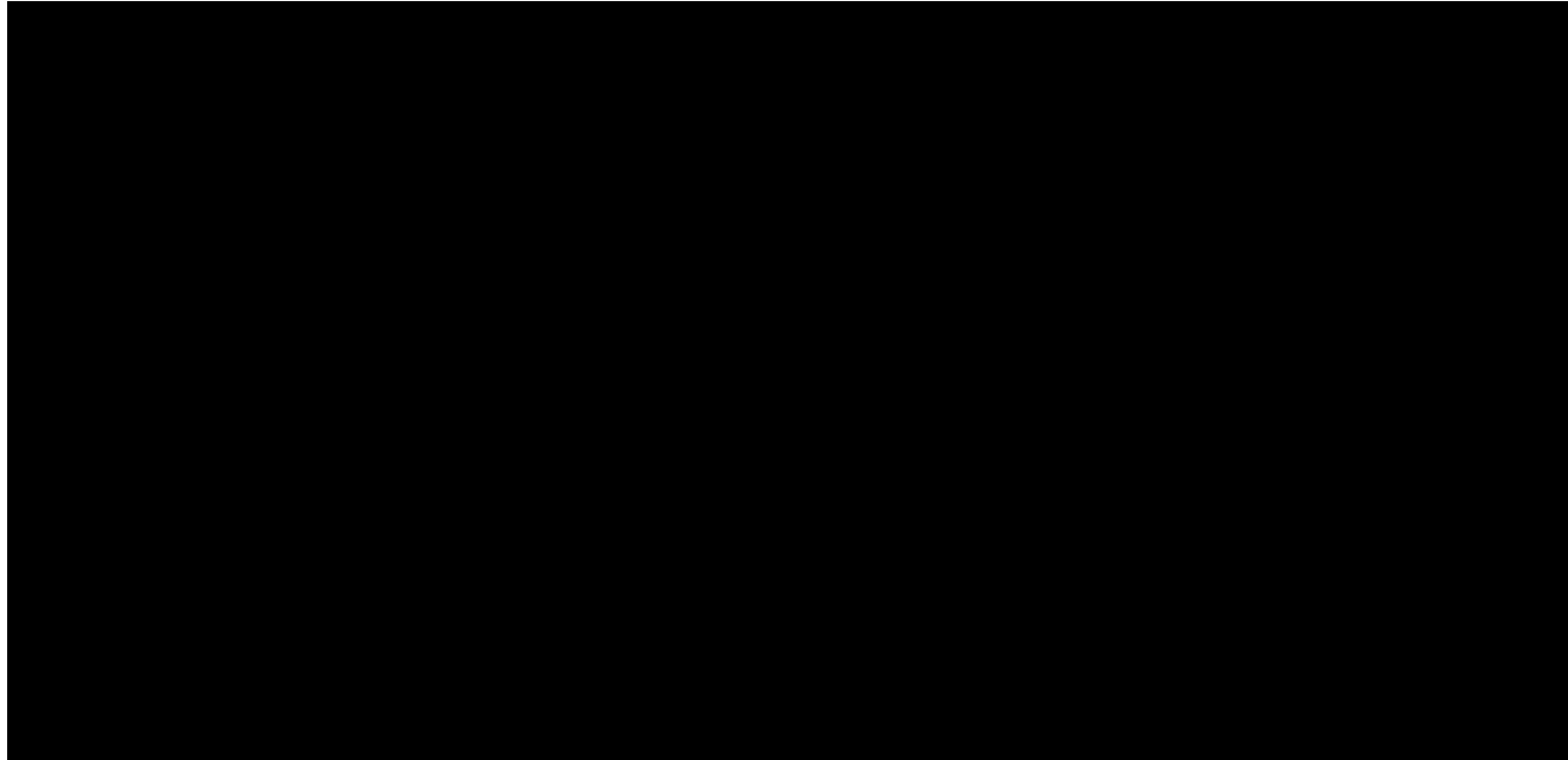
- 2.6 Out-patient medical treatment given to the Freight Manager Personnel by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Freight Manager's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Freight Manager at rates fixed in accordance with current Ministry of Defence regulations.
- 2.7 Accidents to the Freight Manager Personnel which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 2.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Freight Manager Personnel. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 2.9 The Freight Manager shall, wherever possible, arrange for funds to be provided to its Freight Manager Personnel who have been required to work overseas pursuant to Paragraph 2.5 through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Freight Manager and subject to any limitation required by the Freight Manager, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the relevant Freight Manager Personnel are attached. The Freight Manager shall reimburse all such advances made by the Authority on demand.

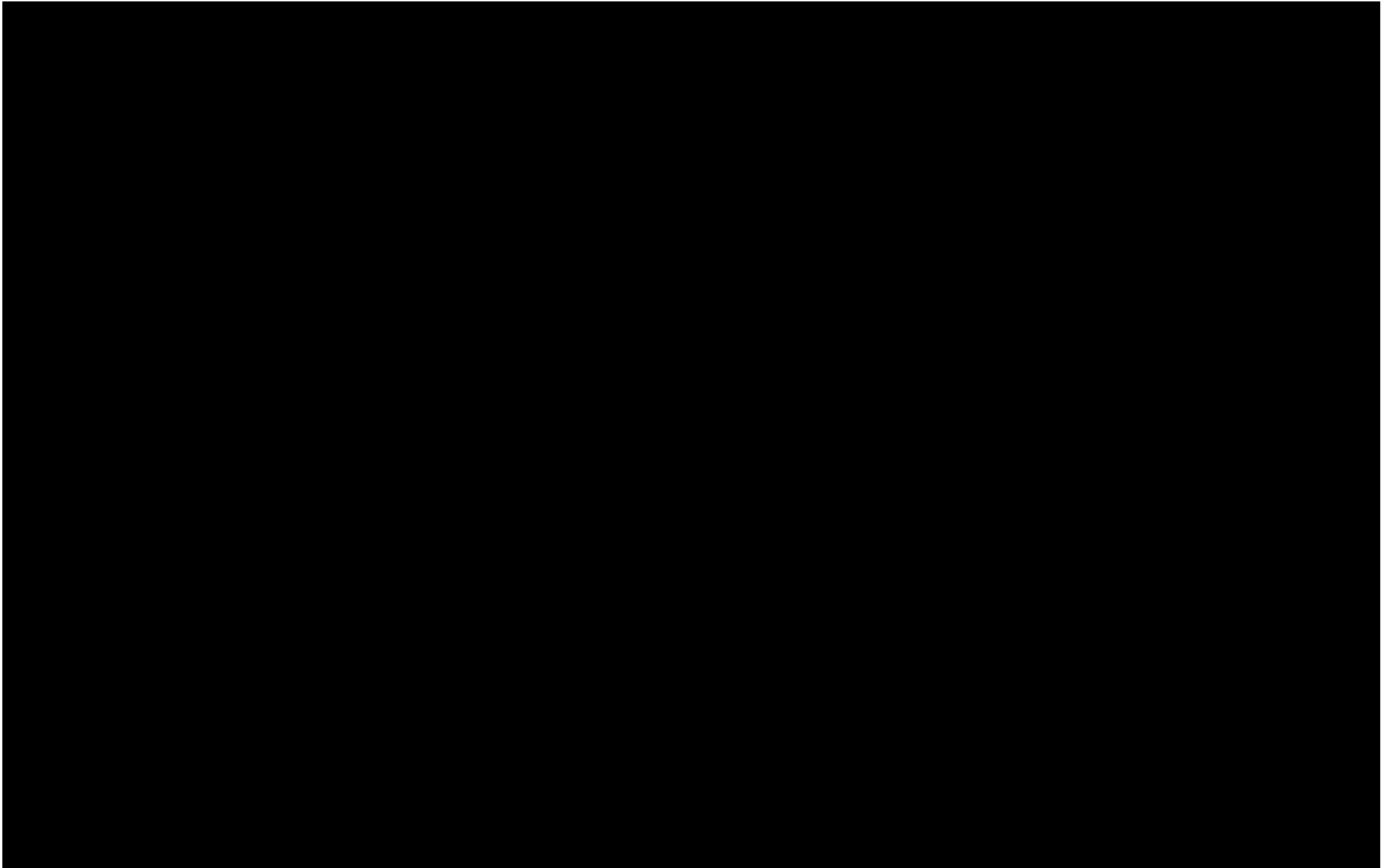
### **3 DEFCONS and DEFFORMS**

- 3.1 The Freight Manager shall, and shall ensure that the Freight Manager Personnel, comply with the terms of any DEFCONS and DEFFORMS relevant to the Site at which the Freight Manager Personnel will have access.
- 3.2 In the event of a conflict between any DEFCONS and DEFFORMS referred to above and the other terms in this Agreement, the DEFCONS and DEFFORMS shall prevail.

**Schedule 16**

**Freight Manager's Tender**





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# Lot A – Air Charter Services – Organisational Diagram



## 2.1.1 Lot A Award Questionnaire Quality Response Template

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ANNEX A - AWARD QUESTIONNAIRE – QUALITY (70%) .....	3



# Introduction

- 1.1 You must complete the AQ contained in this document and submit using the Department's e-Sourcing portal.
- 1.2 This document and associated documents should be submitted as a response to Requirement 2.1.1 Quality Response within the Departments e-Sourcing portal.
- 1.3 The evaluation will be carried out using your responses to this Questionnaire using the award criteria, guidance and scoring matrix set out in *Attachment 5 – Selection Award and Evaluation Guidance*.

## AWARD QUESTIONS

[illegible]





- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Please attach your one page process diagram to the attachments section within the Technical Response using the naming convention: “2.1.1 Lot A AQ2 <supplier name> Process Diagram”.**









	<ul style="list-style-type: none"> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> </ul>	
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	<ul style="list-style-type: none"> <li></li> <li></li> </ul>	

Please attach your one page organisational chart to the attachments section within the Technical Response using the naming convention: "2.1.1 Lot A AQ4 <supplier name> Organisational Charts".

Please attach a maximum of 1 page total of CVs to the attachments section within the Technical Response using the naming convention: "2.1.1 Lot A AQ4 <supplier name> CV".



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

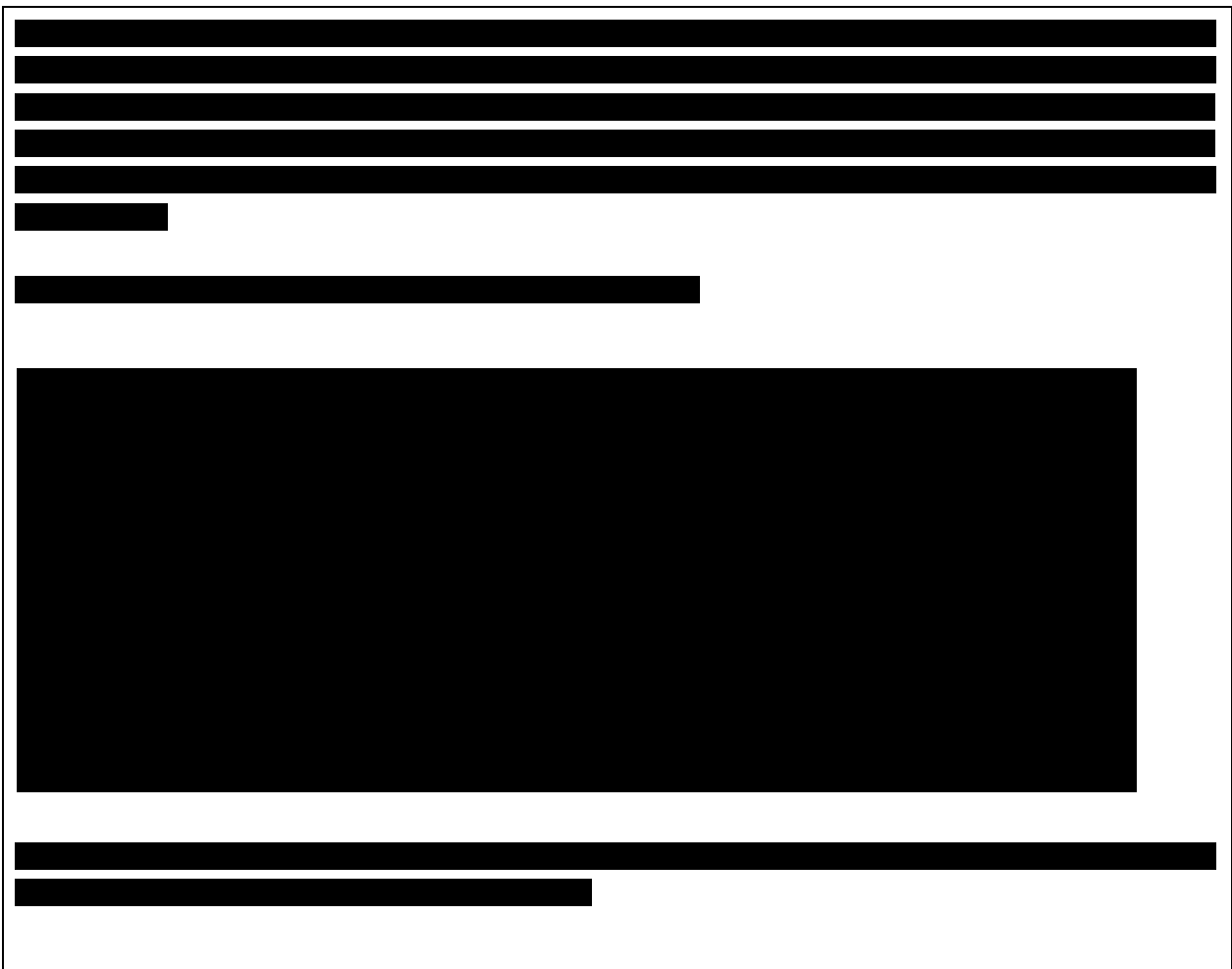
[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



# 2.1.2 Lot A Award Questionnaire Social Value Response Template

## Contents

INTRODUCTION .....2

ANNEX A - AWARD QUESTIONNAIRE – SOCIAL VALUE (10%) .....3

# Introduction

- 1.1 You must complete the AQ contained in this document and submit using the Department's e-Sourcing portal.
- 1.2 This document and associated documents should be submitted as a response to Requirement 2.1.2 Social Value Response within the Departments e-Sourcing portal.
- 1.3 The evaluation will be carried out using your responses to this Questionnaire using the award criteria, guidance and scoring matrix set out in *Attachment 5 – Selection Award and Evaluation Guidance*.

## AWARD QUESTIONS

[illegible]







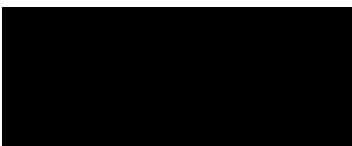


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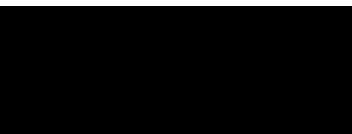
[REDACTED]

[REDACTED]

**Signed by the authorised representative of THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE:**

Name	Position	Authorised Signature 3	Date
			29/10/2021

**Signed by the authorised representative(s) of KUEHNE + NAGEL LIMITED:**

Name	Position	Authorised Signature 1	Date
			

Name	Position	Authorised Signature 2	Date
