

## Award Form

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


1.	<b>Buyer</b>	<p>The Secretary of State for Education (the Buyer).</p> <p>Its offices are at: Sanctuary Buildings, Great Smith Street, London, SW1P 3BT ]</p>
2.	<b>Supplier</b>	<p>Name: <b>Mott Macdonald Limited</b></p> <p>Address: <b>Mott MacDonald House, 8 – 10 Sydenham Road, Croydon, CR0 2EE</b></p> <p>Registration number: <b>1243967</b></p> <p>SID4GOV ID: <b>N/A</b></p>
3.	<b>Contract</b>	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables, being [Insert general description of the Deliverables] - see Schedule 2 (Specification) for full details.</p> <p>This opportunity is advertised in this Contract Notice in Find A Tender, reference <a href="https://www.find-tender.service.gov.uk/Notice/027699-2023">https://www.find-tender.service.gov.uk/Notice/027699-2023</a> - (FTS Contract Notice).</p>
4.	<b>Contract reference</b>	<b>Con_23378</b>
5.	<b>Buyer Cause</b>	Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Buyer is liable to the Supplier.
6.	<b>Collaborative working principles</b>	The Collaborative Working Principles do not apply to this Contract See Clause 3.1.3 for further details.
7.	<b>Financial Transparency Objectives</b>	<p>The Financial Transparency Objectives do not apply to this Contract.</p> <p>See Clause 6.3 for further details.</p>

8.	<b>Start Date</b>	01 December 2023
9.	<b>Expiry Date</b>	31 March 2025
10.	<b>Extension Period</b>	Further period up to <b>12 months (until 31<sup>st</sup> March 2026)</b> Extension exercised where the Buyer gives the Supplier no less than 3 Months' written notice before this Contract expires
11.	<b>Ending this Contract without a reason</b>	The Buyer shall be able to terminate this Contract in accordance with Clause 14.3.
12.	<b>Incorporated Terms</b> (together these documents form the " <b>this Contract</b> ")	<p>The following documents are incorporated into this Contract. Where numbers are missing we are not using these Schedules. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> <li>(a) This Award Form</li> <li>(b) Any Special Terms (see <b>Section 13 (Special Terms)</b> in this Award Form)</li> <li>(c) Core Terms</li> <li>(d) Schedule 36 (Intellectual Property Rights)</li> <li>(e) Schedule 1 (Definitions)</li> <li>(f) Schedule 6 (Transparency Reports)</li> <li>(g) Schedule 20 (Processing Data)</li> <li>(h) The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> <li>(i) Schedule 2 (Specification)</li> <li>(ii) Schedule 3 (Charges)</li> <li>(iii) Schedule 5 (Commercially Sensitive Information)</li> <li>(iv) Schedule 7 (Staff Transfer)</li> <li>(v) Schedule 10 (Service Levels)</li> <li>(vi) Schedule 13 (Contract Management)</li> <li>(vii) Schedule 16 (Buyer Specific Security Requirements)</li> <li>(viii) Schedule 19 (Cyber Essentials Scheme)</li> <li>(ix) Schedule 21 (Variation Form)</li> <li>(x) Schedule 22 (Insurance Requirements)</li> <li>(xi) Schedule 25 (Rectification Plan)</li> </ul> </li> </ul>

		<p>(xii) Schedule 26 (Sustainability)</p> <p>(xiii) Schedule 27 (Key Subcontractors)</p> <p>(xiv) Schedule 29 (Key Supplier Staff)</p> <p>(xv) Schedule 30 (Exit Management)</p> <p>(i) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.</p>
13	<b>Special Terms</b>	Not applicable
14	<b>Buyer's Environmental Policy</b>	<p>The Department for Education's measures to reduce energy consumption and costs, and carbon emissions is available online at:</p> <p><a href="https://www.gov.uk/government/organisations/department-for-education/about/our-energy-use">https://www.gov.uk/government/organisations/department-for-education/about/our-energy-use</a></p> <p>The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:</p> <p><a href="https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs">https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs</a></p>
15	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under this Contract, to deliver the Social Value outcomes in Schedule 4 (Tender)
16	<b>Buyer's Security Requirements and Security and ICT Policy</b>	See Schedule 16 (Security)
17	<b>Charges</b>	Details in Schedule 3 (Charges)
18	<b>Estimated Charges</b>	<p>Set Up Period – December 2023 - £72,361 (ex. VAT)</p> <p>Live Delivery – Jan 2024 – March 2025 - £499,260 (ex. VAT)</p> <p>Total - £571,621 (ex VAT)</p>
19	<b>Reimbursable expenses</b>	Not applicable
20	<b>Payment method</b>	Monthly in arrears via BACS on submission of a valid invoice.

21	<b>Service Levels</b>	As detailed in Schedule 10 (Service Levels and KPIs) The Service Period is 15 months. A Critical Service Level Failure is: <b>Not Applicable</b>
22	<b>Liability</b>	In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than 150% of the Estimated Yearly Charges  In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being £10 million.
23	<b>Cyber Essentials Certification</b>	<ul style="list-style-type: none"> <li>• Cyber Essentials Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)</li> </ul>
24	<b>Progress Meetings and Progress Reports</b>	The Supplier shall attend Progress Meetings with the Buyer every month  The Supplier shall provide the Buyer with Progress Reports every month
25	<b>Guarantor</b>	Not applicable
26	<b>Virtual Library</b>	In accordance with Paragraph 2.2. of Schedule 30 (Exit Management) <ul style="list-style-type: none"> <li>• the period in which the Supplier must create and maintain the Virtual Library, is as set out in that Paragraph and</li> <li>• the Supplier shall update the Virtual Library every 3 months.</li> </ul>
27	<b>Supplier's Contract Manager</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>
28	<b>Supplier Authorised Representative</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>

29	<b>Supplier Compliance Officer</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>
30	<b>Supplier Data Protection Officer</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>
31	<b>Supplier Marketing Contact</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>
32	<b>Key Subcontractors</b>	<b>Key Subcontractor 1</b> Name (Registered name if registered): <b>Coram BAAF</b> Registration number (if registered): <b>312278</b> Role of Subcontractor: <b>Coram BAAF provide the sector expertise</b>
33	<b>Buyer Authorised Representative</b>	<redacted> <redacted> <redacted> <redacted><redacted> <redacted> <redacted> <redacted>

For and on behalf of the Supplier:		For and on behalf of the Buyer	
Signature:	<redacted> <redacted>	Signature:	<redacted> <redacted> 
Name:	<redacted> <redacted>	Name:	<redacted> <redacted>
Role:	<redacted> <redacted>	Role:	<redacted> <redacted>

Date:	Jan 11, 2024	Date:	Jan 11, 2024
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## **Core Terms – Mid-tier**



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## **1. Definitions used in the contract**

Interpret this Contract using Schedule 1 (Definitions).

## **2. How the contract works**

- 2.1 If the Buyer decides to buy Deliverables under this Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
  - 2.1.1 make changes to the Award Form;
  - 2.1.2 create new Schedules;
  - 2.1.3 exclude optional template Schedules; and
  - 2.1.4 use Special Terms in the Award Form to add or change terms with Supplier approval. .
- 2.2 The Contract:
  - 2.2.1 is between the Supplier and the Buyer; and
  - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under this Contract before entering into it. The Buyer acknowledges that the Supplier will rely on the accuracy, sufficiency and consistency of all information provided to the Supplier by or on behalf of the Buyer.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
  - 2.4.1 the Buyer's requirements for the Deliverables;
  - 2.4.2 the Buyer's operating processes and working methods; and
  - 2.4.3 the ownership and fitness for purpose of the Buyer Assets, and it has it has advised the Buyer in writing of:
    - 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
    - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
    - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,and such actions, timetable and costs are fully reflected in this Contract.

- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - 2.5.1 verify the accuracy of the Due Diligence Information; and
  - 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### 3. What needs to be delivered

#### 3.1 All deliverables

- 3.1.1 The Supplier must provide Deliverables:
  - (a) that comply with the Specification, the Tender Response and this Contract;
  - (b) using reasonable skill and care;
  - (c) using Good Industry Practice;
  - (d) using its own policies, processes and internal quality control measures as long as they don't conflict with this Contract;
  - (e) on the dates agreed; and
  - (f) that comply with Law.
- 3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form. – **Not Applicable**
- 3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:
  - (a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
  - (b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
  - (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative

approach to service development and resourcing with Buyer Third Parties;

- (d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

### **3.2 Goods clauses**

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.3 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery.
- 3.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.5 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.6 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.7 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.8 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.9 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.10 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14) days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.11 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

- 3.2.12 The Buyer will not be liable for any actions, claims and Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

### 3.3 Services clauses

- 3.3.1 Late Delivery of the Services will be a Default of this Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of this Contract.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to this Contract.
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear. – **Not Applicable**
- 3.3.7 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.8 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.

## 4. Pricing and payments

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

- 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the invoice or in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and
  - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided. – **Not Applicable**
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## **5. The buyer's obligations to the supplier**

- 5.1 If Supplier Non-Performance arises from a Buyer Cause or through no fault of the Supplier:
  - 5.1.1 the Buyer cannot terminate this Contract under Clause 14.4.1;
  - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
  - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
  - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 only applies if the Supplier:
  - 5.2.1 gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;
  - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and

5.2.3 mitigated the impact of the Buyer Cause.

## **6. Record keeping and reporting**

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of this Contract during the Contract Period and for seven (7) years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
  - 6.3.1 on or before the Effective Date;
  - 6.3.2 at the end of each Contract Year; and
  - 6.3.3 within six (6) Months of the end of the Contract Period,
  - 6.3.4 and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.
- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
  - 6.4.1 Supplier's currently incurred or forecast future Costs; and
  - 6.4.2 forecast Charges for the remainder of this Contract,
  - 6.4.3 then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5 The Buyer or an Auditor can Audit the Supplier.
- 6.6 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
  - 6.6.1 complies with the Supplier's operating procedures; and
  - 6.6.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7 During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
  - 6.7.1 all information within the permitted scope of the Audit;
  - 6.7.2 any Sites, equipment and the Supplier's ICT system used in the performance of this Contract; and
  - 6.7.3 the Supplier Staff.



- 6.8 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
  - 6.9.1 correcting any identified Default;
  - 6.9.2 rectifying any error identified in a Financial Report; and
  - 6.9.3 repaying any Charges that the Buyer has overpaid.
- 6.10 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - 6.10.1 tell the Buyer and give reasons;
  - 6.10.2 propose corrective action; and
  - 6.10.3 provide a deadline for completing the corrective action.
- 6.11 Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

## **7. Supplier staff**

- 7.1 The Supplier Staff involved in the performance of this Contract must:
  - 7.1.1 be appropriately trained and qualified;
  - 7.1.2 be vetted using Good Industry Practice and the Security Policy (is used); and
  - 7.1.3 comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on this Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 7.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

## **8. Supply chain**

## **8.1 Appointing Subcontractors**

8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

- (a) manage Subcontractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract; and
- (c) with all parties consent to assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

## **8.2 Mandatory provisions in Sub-Contracts**

8.2.1 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- (a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or
- (b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
- (c) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- (d) require the Supplier to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and
- (e) allow the Buyer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

## **8.3 When Sub-Contracts can be ended**

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;

- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

#### 8.4 **Competitive terms**

- 8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items. – **Not Applicable**
- 8.4.2 If the Buyer uses Clause 8.4.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure. - **Not Applicable**

#### 8.5 **Ongoing responsibility of the Supplier**

The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

### 9. **Rights and protection**

- 9.1 The Supplier warrants and represents that:
  - 9.1.1 it has full capacity and authority to enter into and to perform this Contract;
  - 9.1.2 this Contract is entered into by its authorised representative;
  - 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
  - 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;
  - 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under this Contract and for the Buyer to receive the Deliverables;
  - 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
  - 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and

- 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Effective Date or been subject to an investigation relating to a Prohibited Act.
- 9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under this Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
  - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts this Contract; and
  - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 All claims indemnified under this Contract must use Clause 30.
- 9.5 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.
- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

## **10. Intellectual Property Rights (IPRs)**

- 10.1 The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.
- 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
  - 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
  - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

## **11. Rectifying issues**

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
  - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
  - 11.3.1 will give reasonable grounds for its decision; and
  - 11.3.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

## **12. Escalating issues**

- 12.1 If the Supplier fails to:
  - 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
  - 12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.
- 12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

## **13. Step-in rights**

- 13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:
  - 13.1.1 whether it will be taking action itself or with the assistance of a third party;
  - 13.1.2 what Required Action the Buyer will take during the Step-In Process;
  - 13.1.3 when the Required Action will begin and how long it will continue for;
  - 13.1.4 whether the Buyer will require access to the Sites; and
  - 13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 13.2 For as long as the Required Action is taking place:
  - 13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
  - 13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
  - 13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
  - 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
  - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

#### **14. Ending the contract**

- 14.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.

- 14.2 The Buyer can extend this Contract for the Extension Period by giving the Supplier written notice before this Contract expires as described in the Award Form.

**14.3 Ending the contract without a reason**

The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than ninety (90) days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clause 14.6.3 applies.

**14.4 When the Buyer can end this Contract**

14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate this Contract by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

- (a) there's a Supplier Insolvency Event;
- (b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance or fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Buyer, are acceptable;
- (c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- (e) there's any Material Default of this Contract;
- (f) there's any Material Default of any Joint Controller Agreement relating to this Contract;
- (g) there's a Default of Clauses 2.8, 12, 31 or Schedule 28 (ICT Services) (where applicable);
- (h) the performance of the Supplier causes a Critical Service Level Failure to occur;
- (i) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- (j) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (k) the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time this Contract was awarded;
- (l) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;

- (m) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables; or
- (n) the Supplier fails to enter into or to comply with an Admission Agreement under Part D of Schedule 7 (Staff Transfer).

14.4.2 If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate this Contract and Clauses 14.5.1(b)) to 14.5.1(g)) apply.

#### **14.5 What happens if the contract ends**

14.5.1 Where the Buyer terminates this Contract under Clauses 14.4.1, 10.4 and 12.3, Paragraph 7 of Part D of Schedule 7 (Staff Transfer), Paragraph 2.2 of Schedule 12 (Benchmarking) (where applicable) Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable) or Paragraphs 3.1.12.2 or 3.3.1.2 of Part A of Schedule 26 (Sustainability) all of the following apply:

- (a) The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- (b) The Buyer's payment obligations under the terminated Contract stop immediately.
- (c) Accumulated rights of the Parties are not affected.
- (d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.
- (f) The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- (g) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates this Contract under Clause 24.3:

- (a) each party must cover its own Losses; and
- (b) Clauses 14.5.1(b)) to 14.5.1(g)) apply.

14.5.3 The following Clauses survive the termination or expiry of this Contract: 3.2.10, 4, 6, 7.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (Definitions), Schedule 3



(Charges), Schedule 7 (Staff Transfer), Schedule 30 (Exit Management)) (if used), Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

**14.6 When the Supplier (and the Buyer) can end the contract**

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

14.6.2 The Supplier also has the right to terminate this Contract in accordance with Clauses 24.3 and 27.5.

14.6.3 Where the Buyer terminates this Contract under Clause 14.3 or the Supplier terminates this Contract under Clause 14.6.1 or 27.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and
- (c) Clauses 14.5.1(b)) to 14.5.1(g)) apply.

**14.7 Partially ending and suspending the contract**

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

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

14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

**15. How much you can be held responsible for?**

- 15.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form
- 15.2 Neither Party is liable to the other for:
  - 15.2.1 any indirect Losses; and/or
  - 15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:
  - 15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
  - 15.3.3 any liability that cannot be excluded or limited by Law.
- 15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, 9.3.2, 10.2, 35.3.2 or Schedule 7 (Staff Transfer) of this Contract. – **Not Applicable**
- 15.5 In spite of Clause 15.1, The Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (Staff Transfer) of this Contract. – **Not Applicable**
- 15.6 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.
- 15.8 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration: - **Not Applicable**
  - 15.8.1 Deductions; and
  - 15.8.2 any items specified in Clause 15.4.
- 15.9 If more than one Supplier is party to this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:
  - 16.2.1 the Official Secrets Acts 1911 to 1989; and

16.2.2 section 182 of the Finance Act 1989.

- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

## **17. Insurance**

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

## **18. Data protection and security**

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via a secure encrypted method upon reasonable request.
- 18.4 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy and the security requirements specified in the Award Form. and otherwise as required by Data Protection Legislation.
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
  - 18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
  - 18.6.2 restore the Government Data itself or using a third party.
- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is at fault.

**18.8 The Supplier:**

- 18.8.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;
- 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
- 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
- 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

**19. What you must keep confidential**

**19.1 Each Party must:**

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

**19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:**

- 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

- 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 19.2.4 if the information was in the public domain at the time of the disclosure;
  - 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
  - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
  - 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 19.4.2 on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 19.4.4 where requested by Parliament;
  - 19.4.5 under Clauses 4.6 and 20; and
  - 19.4.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 and Schedule 30 (if used).
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.

- 19.6 Transparency Information and any information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise this Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

## **20. When you can share information**

- 20.1 The Supplier must tell the Buyer within forty eight (48) hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
  - 20.2.1 publish the Transparency Information; and
  - 20.2.2 comply with any Request for Information.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## **21. Invalid parts of the contract**

If any provision or part provision of this Contract 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 Contract.

## **22. No other terms apply**

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

## **23. Other people's rights in this Contract**

- 23.1 The provisions of Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3 and 3.1 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (Staff Transfer) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("**CRTPA**").

- 23.2 Subject to Clause 23.1, no third parties may use the CRTPA to enforce any term of this Contract unless stated (referring to CRTPA) in this Contract. This does not affect third party rights and remedies that exist independently from CRTPA.
- 23.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 23.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 23.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## **24. Circumstances beyond your control**

- 24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:
  - 24.1.1 provides a Force Majeure Notice to the other Party; and
  - 24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3 Either party can partially or fully terminate this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

## **25. Relationships created by the contract**

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

## **26. Giving up contract rights**

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

## **27. Transferring responsibilities**

- 27.1 The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer's written consent.
- 27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot subcontract this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about

the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

27.2.3 the proposed Subcontractor employs unfit persons.

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

27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

27.5 The Supplier can terminate this Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.

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

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

27.7.1 their name;

27.7.2 the scope of their appointment;

27.7.3 the duration of their appointment; and

27.7.4 a copy of the Sub-Contract.

## **28. Changing the contract**

28.1 Either Party can request a Variation to this Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.

28.2 The Supplier must provide an Impact Assessment either:

28.2.1 with the Variation Form, where the Supplier requests the Variation; and

28.2.2 within the time limits included in a Variation Form requested by the Buyer.



- 28.3 If the Variation to this Contract cannot be agreed or resolved by the Parties, the Buyer can either:
  - 28.3.1 agree that this Contract continues without the Variation; and
  - 28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).
- 28.4 The Buyer is not required to accept a Variation request made by the Supplier.
- 28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
  - 28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
  - 28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.7 If there is a Specific Change in Law or one is likely to happen during this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or this Contract and provide evidence:
  - 28.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - 28.7.2 of how it has affected the Supplier's costs.
- 28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

## **29. How to communicate about the contract**

- 29.1 All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

### **30. Dealing with claims**

- 30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.
- 30.2 At the Indemnifier's cost the Beneficiary must both:
  - 30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - 30.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
  - 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
  - 30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

### **31. Preventing fraud, bribery and corruption**

- 31.1 The Supplier must not during the Contract Period:
  - 31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
  - 31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
  - 31.1.3 bribery provisions are reciprocal
- 31.2 The Supplier must during the Contract Period:
  - 31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to

- prevent a Prohibited Act and require its Subcontractors to do the same;
  - 31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
  - 31.2.3 if required by the Buyer, within twenty (20) Working Days of the Effective Date of this Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 31.3 The Supplier must immediately notify the Buyer if it becomes aware of any Default of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
  - 31.3.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 31.3.3 received a request or demand for any undue financial or other advantage of any kind related to this Contract; and
  - 31.3.4 suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.
- 31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:
  - 31.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
  - 31.5.2 immediately terminate this agreement in accordance with Clause 14.4.1 and the consequences of termination in Clauses 14.5.1 shall apply.
- 31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:
  - 31.6.1 Prohibited Act;
  - 31.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
  - 31.6.3 action it has decided to take.

## **32. Equality, diversity and human rights**

- 32.1 The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:
  - 32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

### **33. Health and safety**

- 33.1 The Supplier must perform its obligations meeting the requirements of:
  - 33.1.1 all applicable Law regarding health and safety; and
  - 33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 33.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of this Contract.

### **34. Environment**

- 34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

### **35. Tax**

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate this Contract where the Supplier has not paid a minor tax or social security contribution.
- 35.2 Where the Charges payable under this Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within five (5) Working Days including:
  - 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and

- 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:
  - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
  - 35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - 35.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
  - 35.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and
  - 35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **36. Conflict of interest**

- 36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential

Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 14.5.1(b) to 14.5.1(g) shall apply.

### **37. Reporting a breach of the contract**

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

37.1.1 breach of Law;

37.1.2 Default of Clause 16.1; and

37.1.3 Default of Clauses 31 to 36.

37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 37.1 to the Buyer or a Prescribed Person.

### **38. Further Assurances**

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

### **39. Resolving disputes**

39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.

39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1 determine the Dispute;

39.3.2 grant interim remedies; and

39.3.3 grant any other provisional or protective relief.

39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There

will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.

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

#### **40. Which law applies**

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

## Schedule 1 (Definitions)

### 1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
  - 1.3.1 reference to a gender includes the other gender and the neuter;
  - 1.3.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
  - 1.3.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.6 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;
  - 1.3.7 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.8 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;



- 1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
- 1.3.10 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole; and
- 1.3.11 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion 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.
- 1.4 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:
- |                                      |   |
|--------------------------------------|---|
| <b>"Achieve"</b>                     | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly; |
| <b>"Additional FDE Group Member"</b> | means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);   |
| <b>"Affected Party"</b>              | the party seeking to claim relief in respect of a Force Majeure Event;  |
| <b>"Affiliates"</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>"Allowable Assumptions"</b>       | means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);  |
| <b>"Annex"</b>                       | extra information which supports a Schedule;  |
| <b>"Approval"</b>                    | the prior written consent of the Buyer and " <b>Approve</b> " and " <b>Approved</b> " shall be construed accordingly;   |
| <b>"Associates"</b>                  | means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly,   |

between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

**"Audit"**

the Buyer's right to:

- (a) verify the integrity and content of any Financial Report;
- (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with this Contract);
- (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
- (d) verify the Open Book Data;
- (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
- (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
- (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

	(j)	carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
	(k)	enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
<b>"Auditor"</b>	(a)	the Buyer's internal and external auditors;
	(b)	the Buyer's statutory or regulatory auditors;
	(c)	the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
	(d)	HM Treasury or the Cabinet Office;
	(e)	any party formally appointed by the Buyer to carry out audit or similar review functions; and
	(f)	successors or assigns of any of the above;
<b>"Award Form"</b>		the document outlining the Incorporated Terms and crucial information required for this Contract, to be executed by the Supplier and the Buyer;
<b>"Beneficiary"</b>		a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>		the public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>		the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of this Contract;
<b>"Buyer Authorised Representative"</b>		the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>		has the meaning given to it in the Award Form;
<b>"Buyer Existing IPR"</b>		means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Crown Body, any Crown IPR, and which are or

have been developed independently of this Contract (whether prior to the Effective Date or otherwise) [but excluding Buyer Software];

<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Buyer Third Party"</b>	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
<b>"Buyer's Confidential Information"</b>	<p>(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 Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(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 Buyer's attention or into the Buyer's possession in connection with this Contract; and</p> <p>information derived from any of the above;</p>

<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of this Contract which comes into force after the Effective Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under this Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in Schedule 5 (Commercially Sensitive Information (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
<b>"Contract"</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;

<b>"Contract Period"</b>	the term of this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, until the End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Core Terms"</b>	the Buyer's terms and conditions which apply to and comprise one part of this Contract set out in the document called <b>"Core Terms"</b> ;
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <p>(a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <ul style="list-style-type: none"><li>(i) base salary paid to the Supplier Staff;</li><li>(ii) employer's National Insurance contributions;</li><li>(iii) pension contributions;</li><li>(iv) car allowances;</li><li>(v) any other contractual employment benefits;</li><li>(vi) staff training;</li><li>(vii) work place accommodation;</li><li>(viii) work place IT equipment and tools reasonably necessary to provide the</li></ul>

	Deliverables (but not including items included within limb (b) below); and
	(ix) reasonable recruitment costs, as agreed with the Buyer;
(b)	costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
(c)	operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and
(d)	Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;
	but excluding:
(a)	Overhead;
(b)	financing or similar costs;
(c)	maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
(d)	taxation;
(e)	finances and penalties;
(f)	amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and
(g)	non-cash items (including depreciation, amortisation, impairments and movements in provisions);
<b>"COTS Software" or "Commercial"</b>	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is

<b>off the shelf Software"</b>	commercially available for purchase and subject to standard licence terms;
<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Award Form;
<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown IPR"</b>	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, 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>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the



	Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under this Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;
<b>"Defect"</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or</li> <li>(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;</li> </ul>
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;

<b>"Deliverables"</b>	Goods, Services or software that may be ordered and/or developed under this Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Dependent Parent Undertaking"</b>	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under this Contract as:</p> <ul style="list-style-type: none"> <li>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>(b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>(c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"DPA 2018"</b>	The Data Protection Act 2018;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
<b>"Effective Date"</b>	the date on which the final Party has signed this Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

<b>"End Date"</b>	the earlier of: <ul style="list-style-type: none"> <li>(a) the Expiry Date as extended by the Buyer under Clause 14.2; or</li> <li>(b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;</li> </ul>
<b>"End User"</b>	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under Clause 15.1: <ul style="list-style-type: none"> <li>(a) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</li> <li>(c) after the end of this Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</li> </ul>
<b>"EU GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free

	movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Contract (whether prior to the Start Date or otherwise);
<b>"Exit Plan"</b>	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
<b>"Expiry Date"</b>	the date of the end of this Contract as stated in the Award Form;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
<b>"FDE Group"</b>	the Supplier and any Additional FDE Group Member;
<b>"Financial Distress Event"</b>	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;</li> <li>(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Buyer which the</li> </ul>

Buyer (acting reasonably) considers to be adequate;

- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
  - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
  - (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
  - (iii) non-payment by any FDE Group entity of any financial indebtedness;
  - (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
  - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or
  - (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,

	<p>in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with this Contract; or</p> <p>(j) any [one] of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold;</p>
<b>"Financial Report"</b>	<p>a report provided by the Supplier to the Buyer that:</p> <p>(a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</p> <p>(b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</p> <p>(c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract; and</p> <p>(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;</p>
<b>"Financial Transparency Objectives"</b>	<p>means:</p> <p>(a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;</p> <p>(b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;</p> <p>(c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</p>

- (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;

**"FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**"Force Majeure Event"**

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

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
  - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
  - (iii) any failure of delay caused by a lack of funds,



	and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;
<b>"Force Majeure Notice"</b>	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>"General Anti-Abuse Rule"</b>	<ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013; and</li> <li>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</li> </ul>
<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>"Goods"</b>	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
<b>"Good Industry Practice"</b>	At any time the 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 at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	<ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which: <ul style="list-style-type: none"> <li>(i) are supplied to the Supplier by or on behalf of the Buyer; and/or</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> <li>(b) any Personal Data for which the Buyer is Controller;</li> </ul>
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	His Majesty's Revenue and Customs;
<b>"ICT Environment"</b>	the Buyer System and the Supplier System;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Contract;</li> <li>(b) details of the cost of implementing the proposed Variation;</li> <li>(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> </ul>

	(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Incorporated Terms"</b>	the contractual terms applicable to this Contract specified in the Award Form;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Controller"</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with this Contract;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of this Contract specified in the Award Form;
<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> <li>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> <li>(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</li> <li>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</li> </ul> </li> <li>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a</li> </ul>

proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
  - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
  - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;

	<ul style="list-style-type: none"> <li>(iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</li> <li>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</li> <li>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</li> </ul>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with this Contract;
<b>"Intellectual Property Rights" or "IPR"</b>	<ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(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</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IP Completion Day"</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 36 (Intellectual Property Rights) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has

	provided access) to the Buyer in the fulfilment of its obligations under this Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
<b>"Joint Control"</b>	where two (2) or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Controllers"</b>	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	any Subcontractor: <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>(c) with a Sub-Contract with this Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract,</li> </ul> and the Supplier shall list all such Key Subcontractors in the Award Form;
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already

	in the other Party's possession before the Effective Date;
<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"Law Enforcement Processing"</b>	processing under Part 3 of the DPA 2018;
<b>"Losses"</b>	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>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"Material Default"</b>	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)
<b>"Marketing Contact"</b>	shall be the person identified in the Award Form;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;

<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR</p>
<b>"New IPR Item"</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>"Notifiable Default"</b>	<p>means:</p> <p>(a) the Supplier commits a Material Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>
<b>"Object Code"</b>	software and/or data in machine-readable complied object code form;
<b>"Occasion of Tax Non – Compliance"</b>	<p>where:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to</p>



	the General Anti-Abuse Rule or the Halifax Abuse Principle;
	(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
	(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;
<b>"Open Book Data"</b>	complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to: <ul style="list-style-type: none"> <li>(a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>(b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> <li>(i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>(iii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>(iv) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>(v) Reimbursable Expenses, if allowed under the Award Form;</li> </ul> </li> </ul>

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

<b>"Open Licence"</b>	means any material that is published for use, with rights to access, copy, modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> , and includes the Open Source publication of Software;
<b>"Open Source"</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>"Open Licence Publication Material"</b>	means items created pursuant to this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but

	excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Prohibited Acts"</b>	(a) to directly or indirectly offer, promise or give any person working for or engaged by the

Buyer or any other public body a financial or other advantage to:

- (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 Contract; or
- (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 Buyer or other public body; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**"Protective Measures"**

technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 16 (Security);

**"Public Sector Body "**

means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;

**"Recall"**

a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the

	IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none"> <li>(a) full details of the Notifiable Default that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Notifiable Default; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);</li> </ul>
<b>"Rectification Plan Process"</b>	the process set out in Clause 11;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</li> <li>(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li> </ul>
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any

	guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);

<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Award Form (if used), in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under this Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
<b>"Sites"</b>	<p>any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"><li>(a) the Deliverables are (or are to be) provided; or</li><li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li><li>(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);</li></ul>
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;

<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of this Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
<b>"Social Value Report"</b>	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used;
<b>"Software"</b>	any software including Specially Written Software, COTS Software and software that is not COTS Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in Schedule 36 (Intellectual Property Rights);
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into this Contract;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that



Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;

<b>"Specification"</b>	the specification set out in Schedule 2 (Specification);
<b>"Standards"</b>	<p>any:</p> <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 Supplier would reasonably and ordinarily be expected to comply with;</li> <li>(b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>(c) standards agreed between the Parties from time to time;</li> <li>(d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Step-In Process"</b>	the process set out in Clause 13;
<b>"Step-In Trigger Event"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Service Level Failure;</li> <li>(b) the Supplier committing a Material Default which is irremediable;</li> <li>(c) where a right of termination is expressly reserved in this Contract;</li> <li>(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor;</li> <li>(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;</li> <li>(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier</li> </ul>

	not being in breach of its obligations under this agreement;
	(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;
	(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or
	(i) a need by the Buyer to take action to discharge a statutory duty;
<b>"Step-Out Plan"</b>	means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under this Contract following the completion of the Step-In Process;
<b>"Storage Media"</b>	the part of any device that is capable of storing and retrieving data;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
<b>"Subsidiary Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;

<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with this Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
<b>"Supplier Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier New and Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to: <ul style="list-style-type: none"> <li>(a) Achieve a Milestone by its Milestone Date;</li> <li>(b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</li> <li>(c) comply with an obligation under this Contract;</li> </ul>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of this Contract for the relevant period;

<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under this Contract;
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"> <li>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;</li> <li>(c) information derived from any of (a) and (b) above;</li> </ul>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges,

	Reimbursable Expenses and other sums due from the Buyer under this Contract detailed in the information are properly payable;
<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 (Exit Management);
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in this Contract;
<b>"Test Plan"</b>	a plan: <ul style="list-style-type: none"> <li>(a) for the Testing of the Deliverables; and</li> <li>(b) setting out other agreed criteria related to the achievement of Milestones;</li> </ul>
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Third Party IPR Licence"</b>	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 (Intellectual Property Rights);

<b>"Transparency Information"</b>	the Transparency Reports and the content of this Contract, including any changes to this Contract agreed from time to time, except for –  (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and  (b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
<b>"UK GDPR"</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
<b>"Variation"</b>	means a variation to this Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 28 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax

Arrangements of Public Appointees)  
(<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the Deliverables;  
and

**"Working Day"**

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

## Schedule 2 (Specification)

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

### OVERVIEW OF THE AUTHORITY

1. The Department for Education (DfE), is responsible for children's services and education, including early years, schools, higher and further education policy, apprenticeships and wider skills in England. We work to provide children's services, education and skills training that ensures opportunity is equal for all, no matter background, family circumstances, or need. At our heart, we are the department for realising potential. We enable children and learners to thrive, by protecting the vulnerable and ensuring the delivery of excellent standards of education, training and care. This helps realise everyone's potential – and that powers our economy, strengthens society, and increases fairness.

### POLICY BACKGROUND

2. DfE is looking for an organisation to develop, co-ordinate and manage Fosterlink a support service for Local Authority (LA) fostering service providers, which will offer in-depth diagnostic support specifically focused on their recruitment and approval practices, with the aim of providing bespoke recommendations for improvement, alongside building a strong evidence base on which to share good practice nationally.

3. The [Independent Review of Children's Social Care](#) and [Competition and Markets Authority review into Children's Social Care](#) have called for urgent action to recruit more foster carers. The Government made fostering a day one commitment in their response to these reviews. There is a long-standing placement sufficiency problem in foster care, which is likely to worsen due to increasing concerns over the rising cost of living, with strong evidence this is negatively impacting on retention<sup>1</sup>. The implications for this to children's outcomes, as well as LA finances, demand action. In her oral statement, responding to the Independent Review, Secretary of State Keegan stated that we will 'reform the care system to make sure we have the right homes for children in the right places'.

4. In the Government's response to the Independent Review of Children's Social Care, and CMA markets study, *Stable Homes, Build on Love*, DfE have pledged to put love, relationships, and a stable home at the heart of being a child in care. When care is the best choice for a child, it is critical that the care system provides stable, loving homes close to children's communities. However, this is increasingly challenging as fostering service providers find it hard to recruit new foster carers. With an aging foster care population, and a decreasing number of new foster carers recruited each year, means too often children are living far from where they would call home or in the wrong type of home for what they need. We need urgent action to support fostering service providers to improve their recruitment and



approval processes, to minimise the 'drop off' rates between initial enquiry and approval. This will support our mission to ensure that children are in the right homes in the right places.

5. We know that for children who can no longer live with their family, foster care provides the next best alternative. However, there are not enough foster carers and this can lead to issues such as residential care and placement breakdown. 2022 Ofsted research on why children go into children's homes found 41% of children were placed in residential care following a breakdown of their fostering placement. Whilst it is not possible to say from this study whether early intervention with a foster carer might have prevented the breakdown research by the What Works Centre for Children's Social Care found that a recent increase in the demand for children's residential care was attributed to a lack of fostering capacity and that children who were eligible or better suited for fostering ended up in residential care because of insufficient fostering capacity (WWCSC, 2022). Ofsted 2022 data shows that residential care was part of the intended care plan for just over half of the children surveyed.

6. There is evidence that the shortage of suitable foster carers leads to worse experiences for children in care.<sup>2</sup> Shortages of foster carers also impact on LA budgets and, at worst, see children who could thrive in foster care placed in more expensive residential provision. We estimate the annual difference in cost per child in LA or private or voluntary residential care and the equivalent place in foster care to be £204,000 a year<sup>3</sup>.

7. Data of foster care recruitment shows key weak points in the process. In the year ending March 2022, there were 138,075 initial enquiries from prospective fostering households, an all-time high. However, only 8,280 foster carer applications were received. Whilst this data should be treated with caution due to likely duplication in numbers caused by individuals enquiring with more than one service, there are clear drop off points with 94% of enquiries not resulting in an application. Even fewer go on to be approved, with 4,035 new fostering households approved in the year ending March 2022.<sup>4</sup> By increasing the number of foster carers available, LAs would be able to ensure that there are sufficient foster care placements for children whom foster care is recommended on their care plan

8. To start changing the way we provide stable, loving homes for children in care, over the next two years the government has pledged to deliver a fostering recruitment and retention programme so foster care is available for more children who need it, investing over £27 million over the next two years. This end-to-end improvement programme will boost approvals of foster carers in areas of specific shortage, as well as addressing retention through better support to existing foster carers and will be made available to approximately 50% of all LAs in this initial phase.

9. In order to provide much needed support to the remaining 50% of LAs not involved in the fostering recruitment and retention programme, we are proposing to offer them *Fosterlink*, a national support service.

10. This work will operate in parallel with roll out of the wider foster carer recruitment and retention programme. More information about this work can be found here: [Fostering Recruitment and Retention programme - GOV-UK Find a](#)

[grant \(find-government-grants.service.gov.uk\)](https://find-government-grants.service.gov.uk). This procurement is seeking an organisation to provide individual, bespoke support (requirement one) to LAs who are not part of the above programme to help them identify improvements they can make to their foster carer recruitment and approval practices and facilitate networking and the sharing of successful practice examples (requirement two) available to all LAs.

## REQUIREMENTS

### Knowledge and skills

11. The successful supplier will need to possess the following requisite skills and expertise:

- i. A demonstrable record of working in a Children's Social Care context with experience specifically in foster care recruitment;
- ii. An understanding of how to maximise data collection and tracking systems for prospective foster carers to enable system improvement recommendations for recruitment and approval practices;
- iii. A demonstrable knowledge of good practice within foster care recruitment, including marketing approaches, and a knowledge of best-practice approaches to the recruitment and approval processes;
- iv. An in-depth understanding of foster care, including up to date research and evidence to inform best practice
- v. Experience of working with LAs, including credibility within the sector at multiple levels (working to senior Director of Children's Services) to influence delivery and acquire the information needed.

### Description of service requirements

12. There are two main service requirements:

#### **Requirement One: Diagnostics**

13. *Description:* in-depth sessions with individual LAs to consider their current foster carer recruitment and approval practices, policies, processes and figures, data and digital tracking of initial enquiries through to application, as well as considering their approach to marketing, the support and training available and the support needs of their foster carers producing a set of findings highlighting strengths, areas for improvement and clear recommendations. Phase 1 of the project activities (70%) will be delivered in FY 23-24.

14. *Deliverables:*

- design of the diagnostic tool to use with participating LAs
- **contact, arrange and deliver in depth diagnostic sessions with a minimum of 36 LAs in FY 23-24.**
- offer and provide up to 3 working days of follow up support to LAs within 12 months of diagnostic support visit, this may include support and advice with business cases.

- work intensively with LA foster recruitment teams individually for a minimum of 3 days and up to 5 working days to look at their end-to-end foster carer recruitment and approval practices, policies, processes, and figures as well as their CLA population and sufficiency data.
- engage or facilitate engagement with existing and prospective foster carers in the LA to inform recommendations.
- at the end of this period the organisation will produce and present a clear set of bespoke findings highlighting strengths, areas for improvement with a clear, bespoke development plan and set of recommendations for the short and medium term based on the need in the LA. These recommendations should include no/low-cost practice improvements alongside recommendations for medium and long-term changes. Additional support in the form of business case will also be provided.
  - Individual diagnostic reports would belong to the DfE and would be used for the purpose of evidence building. Information regarding individual LAs would not be shared with third parties, e.g. Ofsted except in circumstances where there was a significant safeguarding concern. LAs have full access to their own diagnostic reports to use to support development of their practice.
  - Draft and secure feedback on the service received.

## **Requirement Two: Event organisation and capturing and sharing of examples of successful “what works” practices**

15. **Description:** Capture and share practice examples of what works well in foster carer recruitment and approval processes. Organise and deliver regional workshops and national events to facilitate and encourage networking, peer-to-peer support and to share what works practice amongst all LAs. The remaining project activities (30%) will be delivered in FY24-25.

16. **Deliverables:**

- Arrange, facilitate and deliver quarterly networking regional/sub-regional workshop sessions across the county, with groups of LAs focusing on specific themes or challenges to better understand the issues, enable shared learning and agree practical solutions enabling peer-to-peer troubleshooting and the strengthening of regional relationships and networking.
- identify the areas where LAs most commonly need support emerging from requirement one and structure the workshops around these themes bringing in expert advice from the sector as required.
- arrange and run two national events available to all LAs to showcase best practice and celebrate success, sharing and showcasing innovative approaches to foster carer recruitment from the sector and LAs.
- capture, share and disseminate approaches, strategies, and innovative ways of working which have proved successful for other LAs.
- Deliver a minimum of 4 in person events, 5 virtual events and 2 virtual visits.
- Draft and secure feedback on the events delivered and material shared.

**Key Performance Indicators:**

KPI name	Description	Target Measure	Frequency of reporting
KPI – Delivery activity	<b>Delivery:</b> Diagnostic support is undertaken in a minimum of 36 LAs in FY 23-24 (3-5 working days diagnostic visit, 2 days report writing).	80% of the minimum delivery to 36 LAs to have had diagnostic support by April 2024	Quarterly
	<b>Delivery:</b> Up to 3 working days of follow up support is offered within 12 months after diagnostic support visit this may include support and advice with business cases.	80% of LAs engaged to have used follow up support by March 2025	Quarterly
	<b>Delivery:</b> Diagnostic report containing a clear set of bespoke findings highlighting strengths, areas for improvement with a clear bespoke development plan and set of recommendations for the short and medium term is produced and shared with the LA within 30 working days of diagnostic visit.	100% of all visits conducted to have report within 30 working days	Quarterly
KPI Customer Feedback	<b>Feedback</b> from LAs – 90% of LAs, responding to the survey, receiving diagnostic support each quarter rated the support and follow up support they received overall as excellent or good - monitored quarterly through anonymous feedback questionnaire sent out by the supplier	90% of LAs, who responded to the survey, involved rate support as good	Quarterly
	Feedback questionnaires post events show 80% of LA attendees, responding to the survey, rated the events as good or excellent	80% of LA attendees responding to the survey, rated the events as good or excellent	Quarterly
	Feedback on use and quality of materials shared quarterly	80% of LAs who responded to the survey, answered yes to using the material distributed  80% of LAs who responded to the survey, rated good or excellent quality of materials	Quarterly
KPI Social Value	Social Value - Improve health and wellbeing Reporting Metrics Percentage of all companies in the supply chain under the contract to have implemented measures to improve the physical and mental health and wellbeing of employees.	80% of all companies in the supply chain under the contract to have implemented measures to improve the physical and mental health and	31 March 2025 (end of the Initial term)

		wellbeing of employees.	
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## REPORTING AND MANAGEMENT INFORMATION

The successful tenderer will be required to engage in regular meetings with DfE and provide management information to meet the needs of the Department.

Task	Description	Frequency
DfE Reporting	Provide monthly progress reports for DfE including as a minimum: <ul style="list-style-type: none"> <li>• Activity - Hours of support time delivered in each LA, LAs contacted, LA feedback</li> <li>• Thematic issues arising across LAs</li> <li>• Development of learning materials to be shared with the sector (FY 2)</li> </ul>	Monthly
	Prompt issue of monthly invoices detailing exact expenditure against agreed budget lines for the previous month	Monthly
	Provide performance delivery reports against agreed KPIs	Quarterly
DfE Meeting	Attend fortnightly meetings with DfE programme management team during the mobilisation period.	Fortnightly
	Attend meetings with DfE contract management team. Attend meetings with DfE and key stakeholders, for example with the Mutual Ventures, the Delivery Partner for the Fostering Recruitment and Retention Programme to share learning and align activity.	Monthly As required
Contract Review	To have regular formal contract reviews to assess how the contract is progressing and whether any changes need to be made.	Quarterly

## DEPARTMENT FOR EDUCATION REPONSIBILITIES

17. DfE will seek and provide the successful supplier with an initial list of LAs in scope who are interested in receiving diagnostic support (requirement one), prioritising those who receive the support if required.

18. The successful supplier will be responsible for liaising with the interested LAs to arrange the support.

19. The successful supplier will be responsible for communicating with and securing attendance of events organised and arranged.

20. DfE will be responsible for final approval of approving requests for feedback from LAs and of materials shared with LAs. The supplier will be responsible for drafting and sending out and collating feedback and material.

## BASE LOCATION

21. Flexible, UK.

## MILESTONES

22. Key milestones for the contract procurement are set out in the table below:

Milestone	Approximate date
Contract tender launched	September 2023 – October 2023 (4-week tender period)
Contract awarded	December 2023
Contract mobilisation period	December 2023 - January 2024
Delivery commences	January 2024

## CONTRACT DETAILS

### Contract value

23. The maximum value for the contract for financial year 2023 – 2024 is £500,000 and £200,000 for financial year 2024 -2025. This maximum amount is inclusive of VAT.

### Contract period

24. The initial contract term will be 16 months. The contract is expected to commence on **the 01 December 2023 and run until 31 March 2025**. There will be an option to extend its term for an additional period of 12 months. The optional extension will be subject to supplier contract performance, the requirements of the Department, the outcomes of the upcoming Spending Review and the steers of the party in leadership following the General Election at the end of 2024.

### Exit strategy and end of contract

25. The Department must ensure that public money is protected and value for money is achieved. To meet this requirement, the supplier will be expected to work closely with the department throughout the lifetime of the contract to ensure that a robust exit plan is in place.

26. The Department will provide the supplier with an exit plan whereby the supplier will be required to complete in full and return to the Department for Education within the first 3 months of contract signature.

## Schedule 3 (Charges)

### 1. How Charges are calculated

#### 1.1 The Charges:

- 1.1.1 shall be calculated in accordance with the terms of this Schedule;
- 1.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and]

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

### 2. The pricing mechanisms

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

### 3. Are costs and expenses included in the Charges

#### 3.1 The Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

- 3.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or
- 3.1.2 costs incurred prior to the commencement of this Contract.

### 4. When the Supplier can ask to change the Charges

- 4.1 The Charges will be fixed for the period of 15 months (Dec 2023 – March 2025) following the Start Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 4.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.

4.3 Any notice requesting an increase shall include:

4.3.1 a list of the Charges to be reviewed;

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

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

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

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

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

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

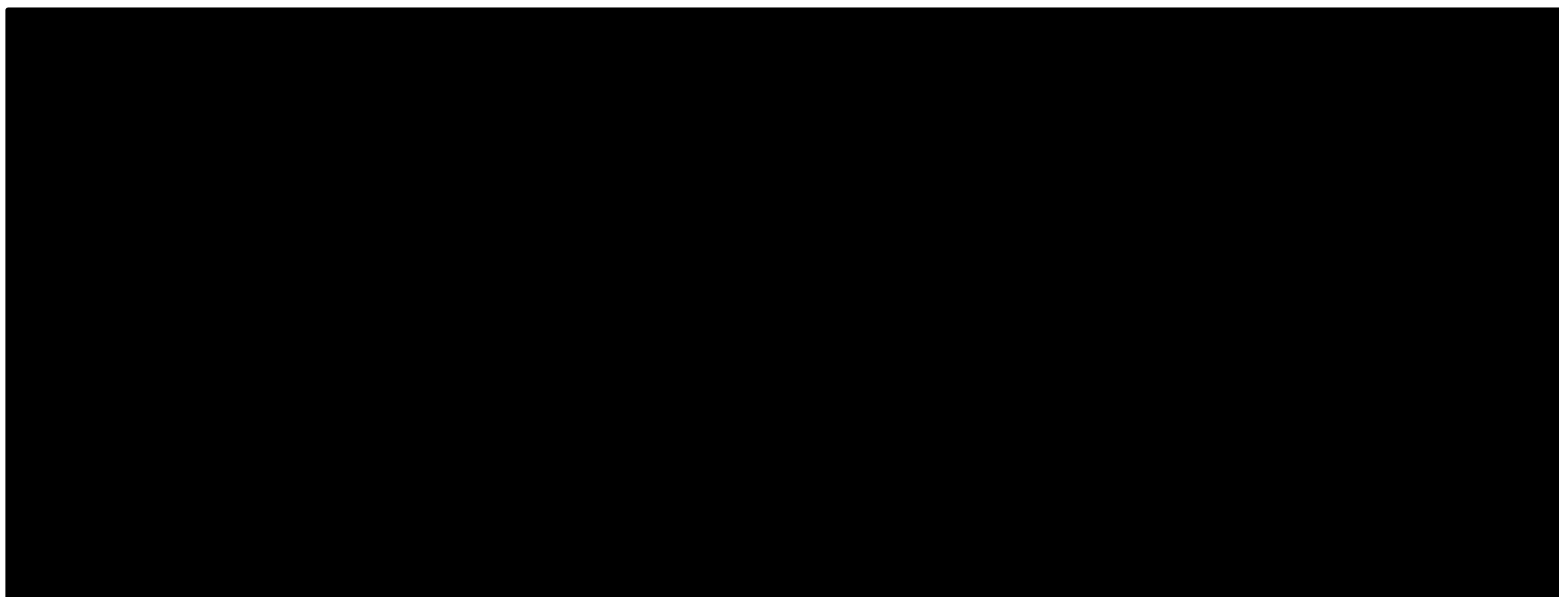
5.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8;

5.1.2 a request from the Supplier, which it can make at any time, to decrease the Charges;

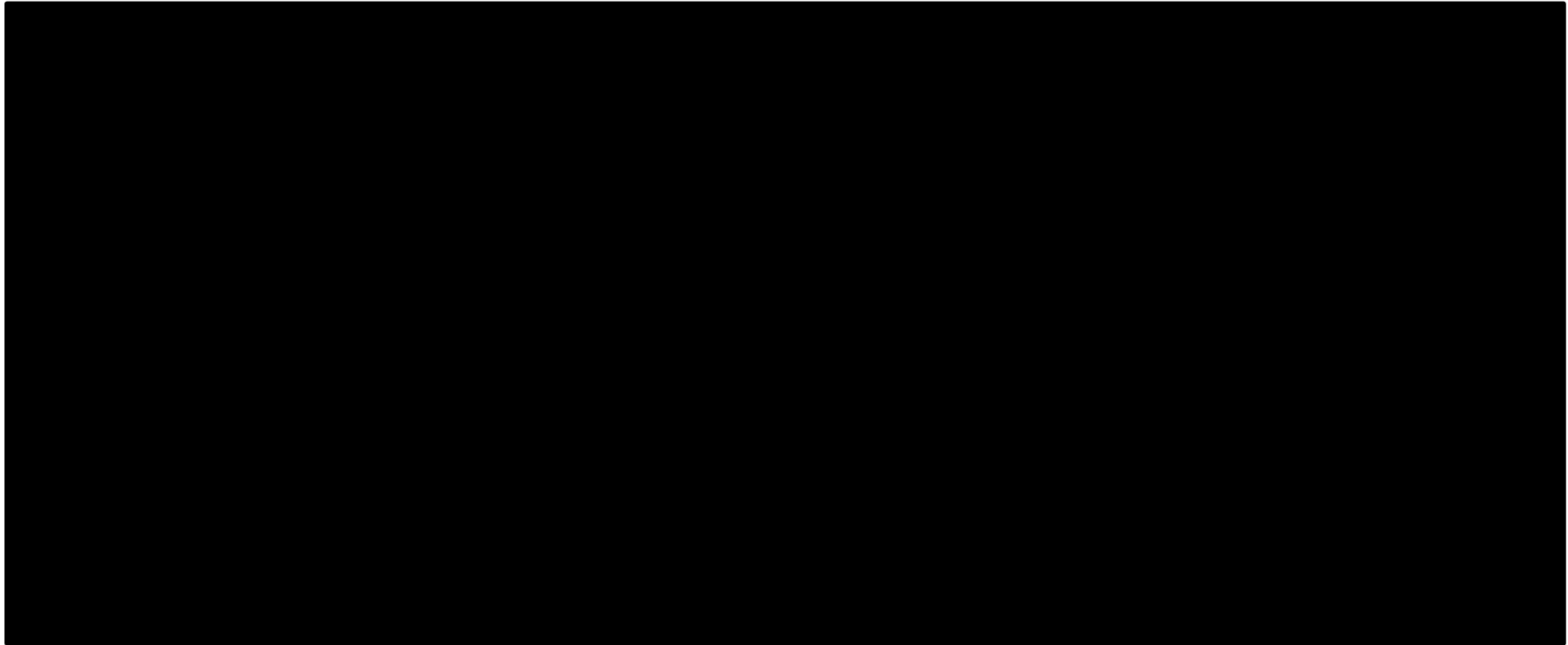


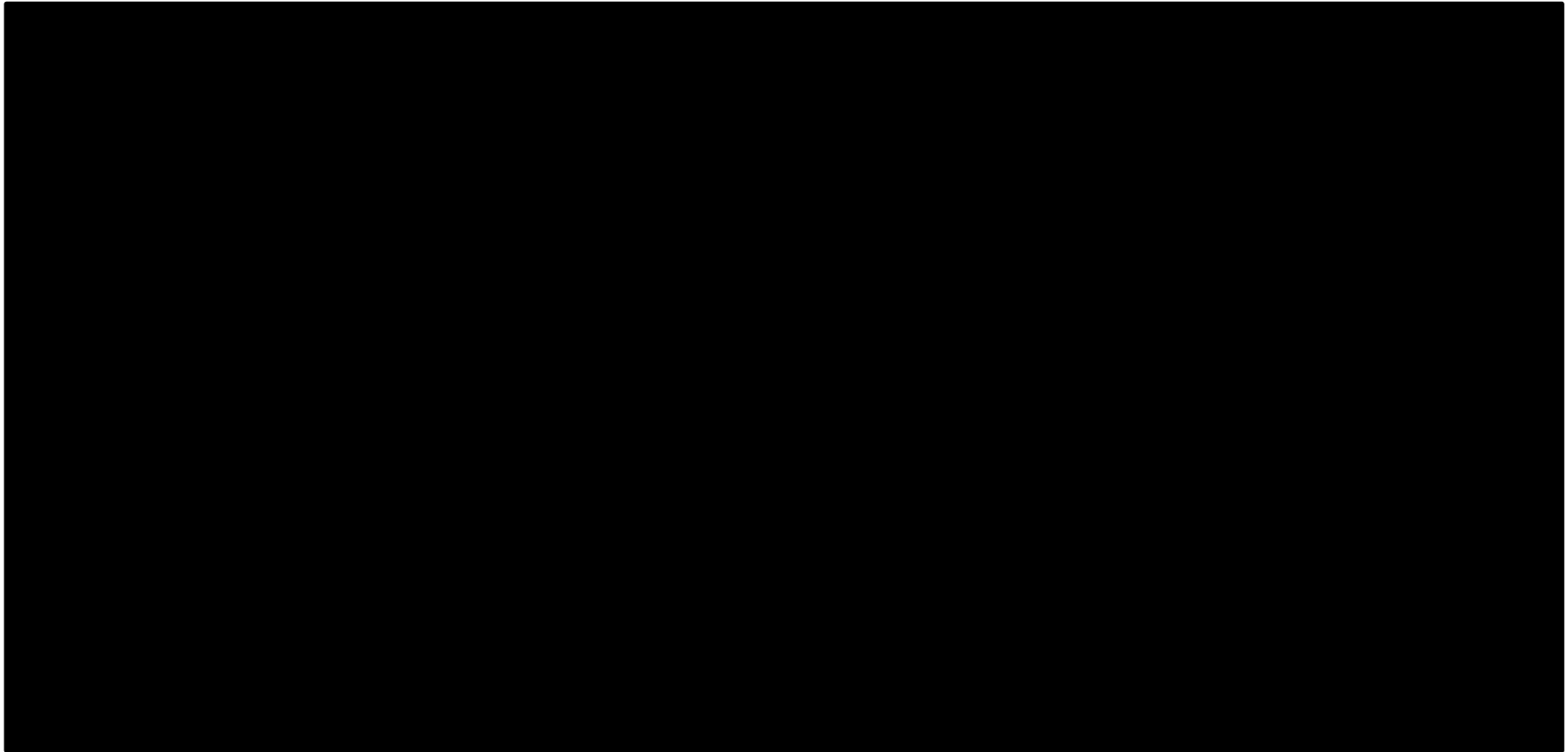
## **Annex 1: Pricing Schedule and Payment Mechanism**

### **1. FTE Profile**

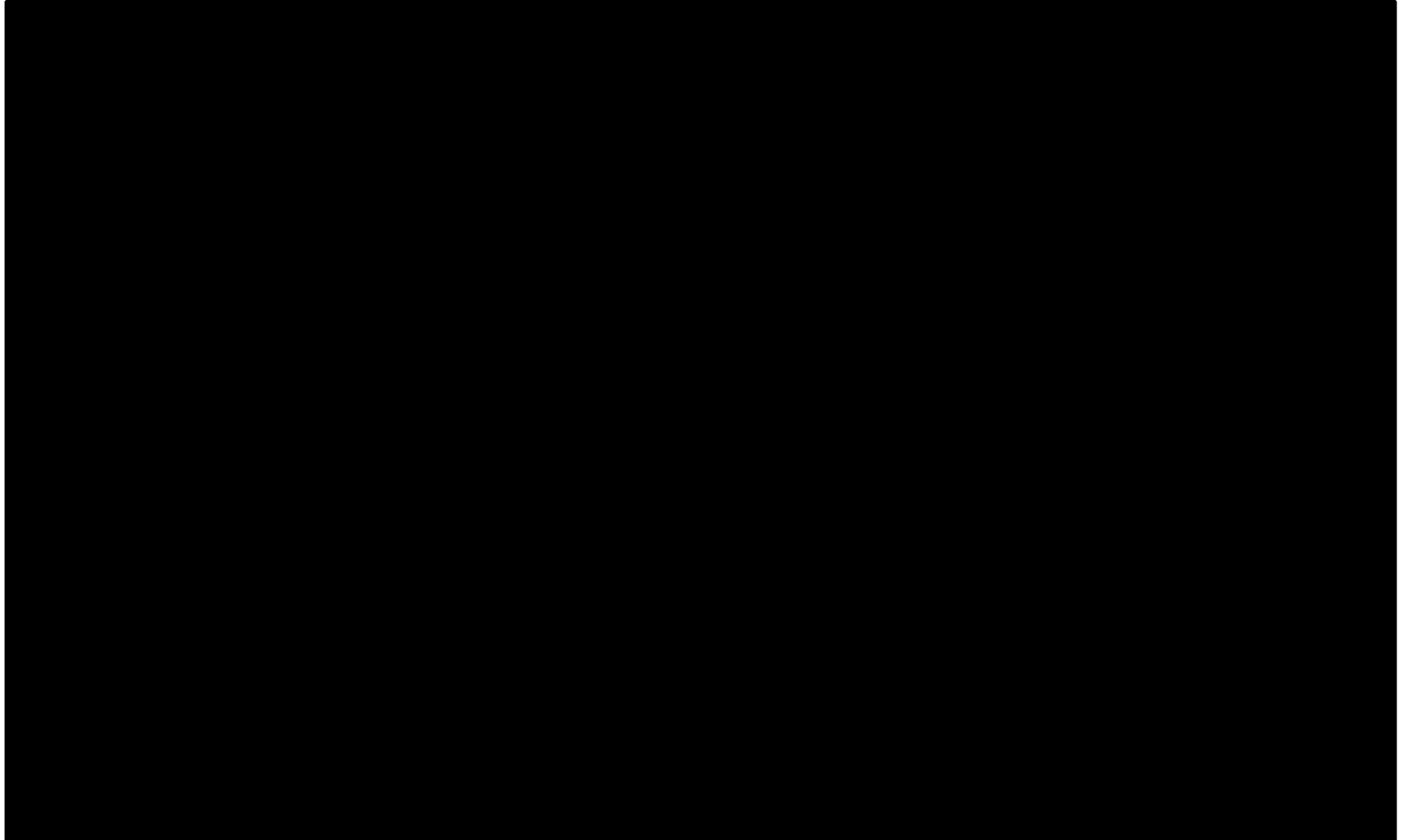


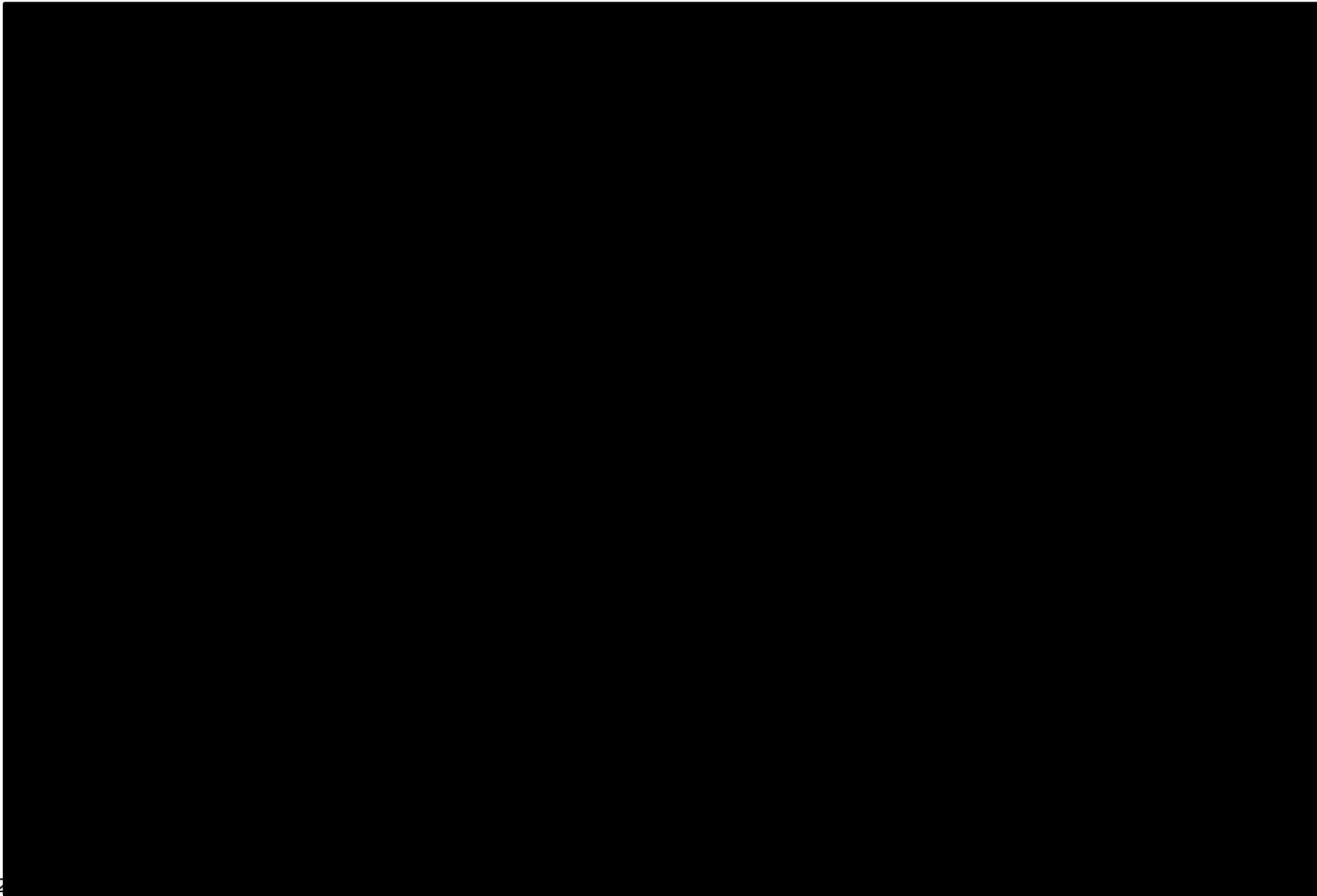
## 2. Delivery Costs





### 3. Payment Mechanism

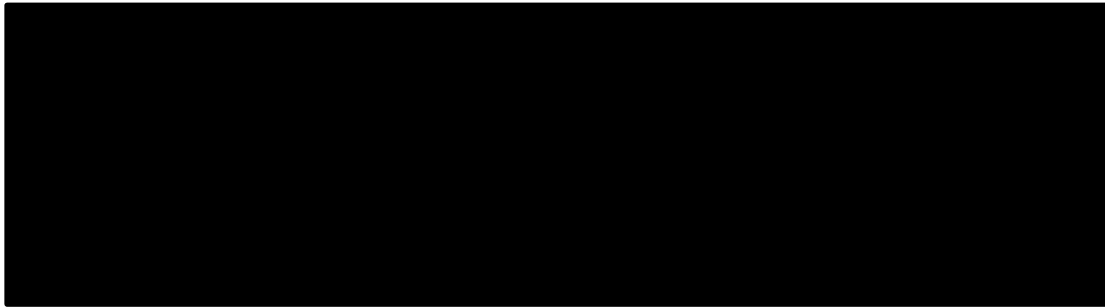




## **Schedule 4 (Tender)**

### **Response to Standard Selection Questionnaire (SSQ)**

#### **Qualification Envelope**



### **Response to Invitation to Tender (ITT)**

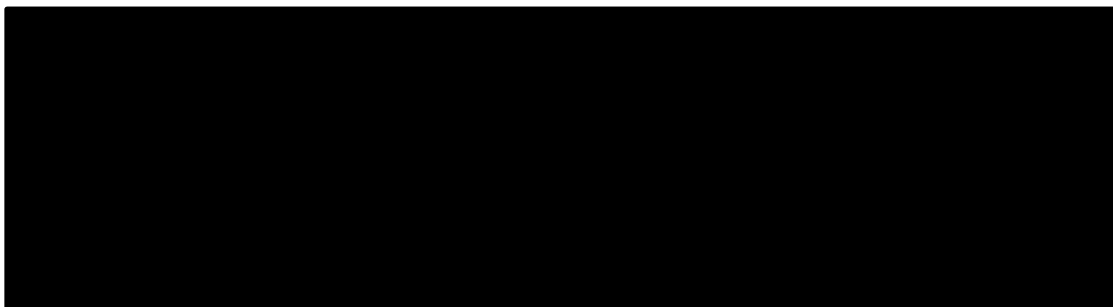
#### **I. Technical Envelope**



001-DfE\_Fosterlink\_Q DfE\_Fosterlink\_Q2\_Ri 002-DfE\_Fosterlink\_Q 003-DfE\_Fosterlink\_Q 004-DfE\_Fosterlink\_Q 001-DfE\_Fosterlink\_Q  
1\_Overall\_Experience\_sk\_Resister\_and\_Assu2\_Delivery\_of\_Require3\_Delivery\_of\_Require4\_Social\_Value\_REDA4\_Timed\_Action\_Plan.

#### **II. Commercial Envelope**

##### **Pricing Schedule/ Cost Breakdown**



## Schedule 5 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following information:

No.	Date	Item(s)	Duration of Confidentiality
1	01.12.2023	<b>Bidders Response – Question 1</b> We will redact specifics upon contract award.	5 years surviving the contract for commercially sensitive information.
2	01.12.2023	<b>Bidders Response – Question 2</b> – contains IPR of our sub-consultants and knowledge of the diagnostic tool which could provide competitors with a commercial advantage. We will redact specifics upon contract award.	5 years surviving the contract for commercially sensitive information.
3	01.12.2023	<b>Bidders Response – Question 3</b> – we will redact specifics upon contract award.	5 years surviving the contract for commercially sensitive information.
4	01.12.2023	<b>Bidders Response – Document 8.</b> Entire table apart from total Cost including VAT. Contains IPR.	5 years surviving the contract for commercially sensitive information.

No.	Date	Item(s)	Duration of Confidentiality
		Publication of the costs and way to achieve value for money will advantage MM competitors and could impact the ability to meet programme requirements.	
5	01.12.2023	<b>Award Form</b> – Contains contact details of both MM and sub-consultant. We will redact specifics upon contract award.	5 years surviving the contract for commercially sensitive information.
6	01.12.2023	<b>Schedule 29 – Key Supplier Staff</b> – Key roles table contains contact details which should remain confidential.	5 years surviving the contract for commercially sensitive information.
7	01.12.2023	<b>Schedule 3 – Charges</b> Entire schedule contains commercially sensitive information.	5 years surviving the contract for commercially sensitive information.
8	01.12.2023	<b>Schedule 4 – Tender</b> Entire schedule contains links to commercially sensitive information, outlined above.	5 years surviving the contract for commercially sensitive information.



## Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in this Contract, within three (3) Months of the Effective Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## Annex A: List of Transparency Reports

Title	Content	Format	Frequency
Progress Reporting	Provide monthly progress reports for DfE including as a minimum: <ul style="list-style-type: none"> <li>• Activity - Hours of support time delivered in each LA, LAs contacted, LA feedback</li> <li>• Thematic issues arising across LAs</li> <li>• Development of learning materials to be shared with the sector (FY 2)</li> </ul>	agreed Progress Report format	Monthly
Performance	Performance delivery reports against agreed KPIs and SLAs	agreed Performance Report format	Quarterly/ Annually
Charges	monthly invoices detailing exact expenditure against agreed budget lines for the previous month	agreed Invoice Report format	Monthly
Key Subcontractors	Key Subcontractors involved, their role and level of dependency on them	Supplier to propose	Contract start, then reviewed annually

## Schedule 7 (Staff Transfer)

### 1. Definitions

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

<b>"Admission Agreement"</b>	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
<b>"Employee Liability"</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"><li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>(b) unfair, wrongful or constructive dismissal compensation;</li><li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li><li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li><li>(e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;</li></ul>

	<ul style="list-style-type: none"> <li>(f) claims whether in tort, contract or statute or otherwise;</li> <li>(g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>
<b>"Fair Deal Employees"</b>	as defined in Part D;
<b>"Former Supplier"</b>	a supplier supplying the Services to the Buyer before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);
<b>"New Fair Deal"</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including:</p> <ul style="list-style-type: none"> <li>(a) any amendments to that document immediately prior to the Relevant Transfer Date;</li> <li>(b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;</li> </ul>
<b>"Notified Subcontractor"</b>	a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>"Old Fair Deal"</b>	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the supplementary guidance <i>"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"</i> issued in June 2004;

<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);
<b>"Replacement Subcontractor"</b>	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
<b>"Service Transfer"</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>"Staffing Information"</b>	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, all information required in Annex E2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
<b>"Statutory Schemes"</b>	means the CSPA, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

<b>"Supplier's Final Supplier Staff List"</b>	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Staff List"</b>	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>"Transferring Buyer Employees"</b>	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

## **2. Interpretation**

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## **3. Which parts of this Schedule apply**

The following parts of this Schedule shall apply to this Contract:

- 3.1 Part E (Staff Transfer on Exit) of this Schedule will always apply to this Contract, including:
  - 3.1.1 Annex E1 (List of Notified Subcontractors);
  - 3.1.2 Annex E2 (Staffing Information).

## **Part A: Staff Transfer at the Start Date – not applicable**

### **Transferring Employees from the Buyer to the Supplier**

#### **1. What is a relevant transfer**

1.1 The Buyer and the Supplier agree that:

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

#### **2. Indemnities the Buyer must give**

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:
  - 2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Buyer Employees; and/or

- (b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of the Employment Regulations; and
- 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.



- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that their contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier will, or shall procure that the Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing;
  - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Supplier and/or any Subcontractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with the Law;
  - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment or alleged employment;
  - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;
- and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:
- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

- pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or
- 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.
- 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than six (6) Months from the relevant Transfer Date.
- 2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall ensure that the Notified Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

### **3. Indemnities the Supplier must give and its obligations**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
- (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee

- but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.6 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier

#### **4. Information the Supplier must provide**

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Subcontractor shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - 5.2.2 Old Fair Deal; and/or
  - 5.2.3 the New Fair Deal.
- 5.3 The Supplier acknowledges, in respect of those Transferring Authority Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("**CSCS**") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.

- 5.4 Any changes necessary to this Contract as a result of Changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## **6. Pensions**

The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:

- 6.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 6.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

## **Part B: Staff transfer at the Start Date - not applicable**

### **Transfer from a Former Supplier on Re-procurement**

#### **1. What is a relevant transfer**

##### **1.1 The Buyer and the Supplier agree that:**

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

#### **2. Indemnities given by the Former Supplier**

- 2.1** Subject to Paragraph 2.1, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.1.1** any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
  - 2.1.2** the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
    - (a)** any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of

- substantial detrimental changes to their working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within five (5) Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Supplier;
- 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2:
- (a) no such offer has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved;
- (d) the Supplier and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person,
- and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.4 The indemnity in Paragraph 2.3:
- 2.4.1 shall not apply to:
- (a) any claim for:
- (i) for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or



- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or

- (b) any claim that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure; and

2.4.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.

2.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that any Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

### **3. Indemnities the Supplier must give and its obligations**

3.1 Subject to Paragraph 3 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a

Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.8 above.

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

#### **4. Information the Supplier must give**

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - 5.1.2 Old Fair Deal; and/or
  - 5.1.3 the New Fair Deal.
- 5.2 Any changes necessary to this Contract as a result of changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## **6. Limits on the Former Supplier's obligations**

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

## **7. Pensions**

- 7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:
  - 7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - 7.1.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

## **Part C: No Staff Transfer on the Start Date – not applicable**

### **1. What happens if there is a staff transfer**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that their contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier;
  - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
  - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment; and
  - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- (a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant

Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
  - 1.5.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief;
  - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
  - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall
  - (i) comply with the provisions of Part D: Pensions of this Schedule, and
  - (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

## **2. Limits on the Former Supplier's obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or

otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## Part D: Pensions – not applicable

### 1. Definitions

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

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Best Value Direction"</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPS"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>	has the meaning in Annex D2 to this Part D;
<b>"Fair Deal Eligible Employees"</b>	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);



<b>"Fair Deal Employees"</b>	<p>those:</p> <ul style="list-style-type: none"> <li>(a) Transferring Buyer Employees; and/or</li> <li>(b) Transferring Former Supplier Employees; and/or</li> <li>(c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C;</li> <li>(d) where the Former Supplier becomes the Supplier those employees;</li> </ul> <p>who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
<b>"Fair Deal Schemes"</b>	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
<b>"Fund Actuary"</b>	means Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the schemes as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D; and
<b>"New Fair Deal"</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including:</p> <ul style="list-style-type: none"> <li>(a) any amendments to that document immediately prior to the Relevant Transfer Date; and</li> <li>(b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Buyer.</li> </ul>

## 2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 subject to Paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

### **3. Supplier obligation to provide information**

- 3.1 The Supplier undertakes to the Buyer:
- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
  - 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
  - 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former New Deal Eligible Employees arising on expiry or termination of this Contract.

#### **4. Indemnities the Supplier must give**

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified [NHS Pensions,] the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any Default by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
  - 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
  - 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
    - (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
    - (b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
  - 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.
- 4.2 The indemnities in this Part D and its Annexes:
- 4.2.1 shall survive termination of this Contract; and
  - 4.2.2 shall not be affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

#### **5. What happens if there is a dispute**

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of

agreement between the Buyer and the Supplier be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
  - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
  - 5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.
- 5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

## **6. Other people's rights**

- 6.1 The Parties agree Clause 23 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Supplier under this Part D, in their or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in their or its own right under section 1(1) of the CRTPA.

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

- 7.1 The Supplier agrees to notify the Buyer should it Default any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for Material Default and the consequences of termination set out in Clause 14.5.1 shall apply in the event that the Supplier:
- 7.1.1 commits an irremediable Default of any provision or obligation it has under this Part D; or
  - 7.1.2 commits a Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the Default and requiring the Supplier to remedy it.

## **8. Transferring New Fair Deal Employees**

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall and shall procure that any relevant Subcontractor shall:
- 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);

- 8.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

## **9. What happens to pensions if this Contract ends**

- 9.1 The provisions of Part E: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## **10. Broadly Comparable Pension Schemes On The Relevant Transfer Date**

- 10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
  - 10.2.1 established by the Relevant Transfer Date;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and

- 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
  - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:

- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3.3) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

## **11. Broadly Comparable Pension Schemes In Other Circumstances**

- 11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPA, 5.2 of Annex D2: NHSPA and/or 3.2 of Annex D3: LGPA apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:

- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
  - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
  - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
  - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
  - 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the



Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

## 12. Right Of Set-Off

- 12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:
- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
  - 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible

Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or

- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

- 12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

## Annex D1: Civil Service Pensions Schemes (CSPS) – not applicable

### 1. Definitions

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

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal; and
<b>"CSPS"</b>	The "Alpha" pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme.

### 2. Access to equivalent pension schemes after transfer

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPS Fair Deal Employees continue

to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier and/or any of its Subcontractors enters into a CSPS Admission Agreement in accordance with Paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of Paragraph 11 of Part D.

## Annex D2: NHS Pension Schemes – not applicable

### 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

<p><b>"Direction Letter/Determination"</b></p>	<p>an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;</p>
<p><b>"NHS Broadly Comparable Employees"</b></p>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> <li>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</li> <li>(b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</li> </ul> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS;</p>

<b>"NHSPS Eligible Employees"</b>	any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter;
<b>"NHSPS Fair Deal Employees"</b>	Means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
	(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
	(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),
	and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).
	For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

<b>"NHS Body"</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Arrears"</b>	any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
<b>"Retirement Benefits Scheme"</b>	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

## 2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
  - 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.



- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. Continuation of early retirement rights after transfer**

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

### **4. NHS Broadly Comparable Employees**

The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

### **5. What the Buyer will do if the Supplier breaches and/or cancels its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.
- 5.3 If the Buyer is entitled to terminate this Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of

Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.

- 5.4 In addition to the Buyer's right to terminate this Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

## **6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:

6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

6.1.2 a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate this Contract.

## **7. Indemnities that a Supplier must give**

- 7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of their employment rights.

## Annex D3: Local Government Pension Schemes (LGPS) – not applicable

### 1. Definitions

- 1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"2013 Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Authority"</b>	in relation to the Fund <b>[insert name]</b> , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Fund"</b>	<b>[insert name]</b> , a pension fund within the LGPS;
<b>["Initial Contribution Rate"]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
<b>"LGPS Eligible Employees"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and

<b>"LGPS Fair Deal Employees"</b>	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
<b>"LGPS Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## 2. Supplier must become a LGPS admission body

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement with effect from the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

### OPTION 1

2.2 [Any LGPS Fair Deal Employees who:

- 2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- 2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

### OPTION 2

[Any LGPS Fair Deal Employees whether:

- 2.2.3 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- 2.2.4 eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

### **3. Broadly Comparable Scheme**

- 3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

### **4. Discretionary Benefits**

Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

### **5. LGPS Risk Sharing**

- 5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.
- 5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any

Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the "**Refund Amount**") where:

- 5.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
  - 5.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Payment**"), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:
- 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
  - 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
  - 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
  - 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
  - 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
  - 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is

- contractually bound to provide such increases on the Relevant Transfer Date);
- 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
  - 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
  - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
  - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of this Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
  - 5.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Buyer shall either:

- 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
  - 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This Paragraph 5 shall survive termination of this Contract.



## **Annex D4: Other Schemes – not applicable**

### **Part E: Staff Transfer on Exit**

#### **1. Obligations before a Staff Transfer**

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
  - 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract; and
  - 1.1.3 the date which is twelve (12) Months before the end of the Term; or
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
  - 1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraphs 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
  - 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is

- employed on the same terms and conditions of employment as the person they replace
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
  - 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
  - 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
  - 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
  - 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
  - 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
  - 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
  - 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
  - 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
  - 1.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or

- Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
  - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
  - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
  - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of Supplier Staff engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each Supplier Staff engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 1.6.4 a description of the nature of the work undertaken by each Supplier Staff by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date,

the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay;
  - 1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
  - 1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
  - 1.7.8 bank/building society account details for payroll purposes.
- 1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that following within twenty (20) Working Days of a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any [reasonable] request to align and assign Supplier Staff to any future delivery model proposed by the Authority for Replacement Services within thirty (30) Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

## **2. Staff Transfer when the contract ends**

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a

Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee

- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff List arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
  - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring before but excluding the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
  - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
  - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
    - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
  - 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that their contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
  - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
  - 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
  - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;
- and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.6 The indemnity in Paragraph 2.5 shall not apply to:
- 2.6.1 any claim for:
    - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

- 2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than six (6) Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier and/or Replacement Subcontract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
  - 2.9.1 the Supplier and/or any Subcontractor; and
  - 2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11 Subject to Paragraph 2.12, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
  - 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.



- 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
  - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier

Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;

- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
  - 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.12 The indemnity in Paragraph 2.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

## **Annex E1: List of Notified Subcontractors**

## Annex E2: Staffing Information

### EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: **[Insert** name of Transferor]

Number of Employees in-scope to transfer: [   ]

#### **Completion notes**

- 1     *If you have any Key Subcontractors, please complete all the above information for any staff employed by such Key Subcontractor(s) in a separate spreadsheet.***
- 2     *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.***
- 3     *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.]***

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS								
	Detail s	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractua l weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
	Emp No 1							
	Emp No 2							
	Emp No							
	Emp No							
	Emp No							
	Emp No							
	Emp No							

		ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
	Detail s	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequenc y of pay reviews	Agreed pay increases	Next pay review date
	Emp No 1								
	Emp No 2								
	Emp No								
	Emp No								
	Emp No								
	Emp No								
	Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								



CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

## Schedule 10 (Service Levels)

### 1. Definitions

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

<b>"Key Performance Indicator Failure"</b>	means a failure to meet the KPI Measure in respect of a KPI;
<b>"Key Performance Indicator Measure Target"</b>	shall be as set out against the relevant KPI in the Annex to Part A of this Schedule; and
<b>"Key Performance Indicator Threshold"</b>	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule.

### 2. What happens if you don't meet the KPIs

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Measure Target for each KPI.
- 2.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.3.1 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).
- 2.4 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of KPI target Measure in respect of one or more KPI and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
- 2.4.1 the total number of Key Performance Indicators for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
- 2.4.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards;

## **Part A: Key Performance Indicators**

### **Key performance Indicators**

If the level of performance of the Supplier:

1.1 is likely to or fails to meet any KPI Performance Measure; or

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

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

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

## Annex A to Part A: Key Performance Indicators (KPIs)

Table 1: Key Performance Indicators

KPI name	Description	Target Measure	Frequency of reporting
KPI – Delivery activity	<b>Delivery:</b> Diagnostic support is undertaken in a minimum of 36 LAs in FY 23-24 (3-5 working days diagnostic visit, 2 days report writing).	80% of the minimum delivery to 36 LAs to have had diagnostic support by April 2024	Quarterly
	<b>Delivery:</b> Up to 3 working days of follow up support is offered within 12 months after diagnostic support visit this may include support and advice with business cases.	80% of LAs engaged to have used follow up support by March 2025	Quarterly
	<b>Delivery:</b> Diagnostic report containing a clear set of bespoke findings highlighting strengths, areas for improvement with a clear bespoke development plan and set of recommendations for the short and medium term is produced and shared with the LA within 30 working days of diagnostic visit.	100% of all visits conducted to have report within 30 working days	Quarterly
KPI – Customer Feedback	<b>Feedback</b> from LAs – 90% of LAs, responding to the survey, receiving diagnostic support each quarter rated the support and follow up support they received overall as excellent or good - monitored quarterly through anonymous feedback questionnaire sent out by the supplier	90% of LAs, who responded to the survey, involved rate support as good	Quarterly
	<b>Feedback</b> questionnaires post events show 80% of LA attendees, responding to the survey, rated the events as good or excellent	80% of LA attendees responding to the survey, rated the events as good or excellent	Quarterly
	<b>Feedback</b> on use and quality of materials shared quarterly	80% of LAs who responded to the survey, answered “yes”. to using the material distributed  80% of LAs who responded to the survey, rated good or excellent quality of materials	Quarterly
KPI Social Value	<b>Social Value</b> - Improve health and wellbeing. <b>Reporting Metrics</b> Percentage of all companies in the supply chain under the contract to have implemented	80% of all companies in the supply chain under the contract to have implemented	31 March 2025 (end of the Initial term)

	measures to improve the physical and mental health and wellbeing of employees.	measures to improve the physical and mental health and wellbeing of employees.	
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## Part B: Performance Monitoring

### 1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Key Performance Indicators will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 1.2.1 for each KPI, the actual performance achieved over the KPI I for the relevant Service Period;
  - 1.2.2 a summary of all failures to achieve KPI that occurred during that Service Period;
  - 1.2.3 details of any Critical Service Level Failures;
  - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
  - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

## **2. Satisfaction Surveys**

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

## Schedule 13 (Contract Management)

### 1. Definitions

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

<b>"Project Manager"</b>	the manager appointed in accordance with Paragraph 2.1 of this Schedule;
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### 2. Project Management

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

### 3. Role of the Supplier Project Manager

- 3.1 The Supplier Project Manager shall be:
  - 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position himself; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to this Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under this Contract.

### 4. Contract Risk Management

- 4.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.

- 4.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 4.2.1 the identification and management of risks;
  - 4.2.2 the identification and management of issues; and
  - 4.2.3 monitoring and controlling project plans.
- 4.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 4.4 The Supplier will maintain a risk register of the risks relating to this Contract which the Buyer and the Supplier have identified.

## Schedule 16 (Buyer Specific Security Requirements)

### 1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement the other definitions in the Contract:

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>the Government’s HMG Baseline Personal Security Standard. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a></p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry, and academia to address the growing need for specialists in the cyber security profession. See website: <a href="https://www.ncsc.gov.uk/information/about-certified-professional-scheme">https://www.ncsc.gov.uk/information/about-certified-professional-scheme</a></p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme, the link below points to these providers: <a href="https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</a></p>

<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Protection Officer”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Personal Data requiring Sensitive Processing”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Legislation</p>
<p>“Buyer’s Data”</p> <p>“Buyer’s Information”</p>	<p>is any data or information owned or retained to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images, or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical, or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Data Controller;</p>
<p>“Departmental Security Requirements”</p>	<p>the Buyer’s security policy or any standards, procedures, process, or specification for security that the Supplier is required to deliver.</p>
<p>“Digital Marketplace / G-Cloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>
<p>“End User Devices”</p>	<p>the personal computer or consumer devices that store or process information.</p>
<p>“Good Industry Standard”</p> <p>“Industry Good Standard”</p>	<p>the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight, and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC”</p> <p>“GSCP”</p>	<p>the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at:</p>

	<a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
“HMG”	Her Majesty’s Government
“ICT”	Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that ICT system.
“Need-to-Know”	the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	the National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL”  “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).  the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen, or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	Role Based Access Control, a method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.

<p>“Storage Area Network”</p> <p>“SAN”</p>	<p>an information storage system typically presenting block-based storage (i.e., disks or virtual disks) over a network interface rather than using physically connected storage.</p>
<p>“Secure Sanitisation”</p>	<p>the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction-0">https://www.cpni.gov.uk/secure-destruction-0</a></p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<p>“Senior Information Risk Owner”</p> <p>“SIRO”</p>	<p>the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm’s length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently, and securely.</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p>"Supplier Staff"</p>	<p>all directors, officers, employees, agents, consultants, and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under the Contract.</p>



## Operative Provisions

- 1.1. The Supplier shall be aware of and comply with the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable these Departmental Security Requirements which include but are not constrained to the following paragraphs.
- 1.2. Where the Supplier will provide products or Services or otherwise handle information at OFFICIAL for the Buyer, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](#) - Action Note 09/14 dated 25 May 2016, or any subsequent updated document, ([PPN 09/23: Updates to the Cyber Essentials Scheme](#)), are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract”. The certification scope shall be relevant to the Services supplied to, or on behalf of, the Buyer.
- 1.3. Where paragraph 1.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services supplied to, or on behalf of, the Buyer. The scope of certification and the statement of applicability must be acceptable, following review, to the Buyer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Buyer’s Data being handled in the course of providing the Services and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Buyer’s Data).
- 1.5. Buyer’s Data being handled while providing an ICT solution or service must be separated from all other data on the Supplier’s or sub-contractor’s own IT equipment to protect the Buyer’s Data and enable the data to be identified and securely deleted when required in line with paragraph 1.14. For information stored digitally, this must be at a minimum logically separated. Physical information (e.g., paper) must be physically separated.
- 1.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas used in relation to the delivery of the products or Services, and that store or process Buyer’s Data, in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g., door access), CCTV, alarm systems, etc.
- 1.7. The Supplier shall have in place, implement, and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Buyer’s Data. This policy should

include appropriate segregation of duties and if applicable role-based access controls (RBAC). User credentials that give access to Buyer's Data or systems shall be considered to be sensitive data and must be protected accordingly.

- 1.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Buyer's Data, including but not limited to:
  - 1.8.1. physical security controls;
  - 1.8.2. good industry standard policies and processes;
  - 1.8.3. malware protection;
  - 1.8.4. boundary access controls including firewalls, application gateways, etc;
  - 1.8.5. maintenance and use of fully supported software packages in accordance with vendor recommendations;
  - 1.8.6. use of secure device configuration and builds;
  - 1.8.7. software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  - 1.8.8. user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
  - 1.8.9. any services provided to the Buyer must capture audit logs for security events in an electronic format at the application, service and system level to meet the Buyer's logging and auditing requirements, plus logs shall be:
    - 1.8.9.1. retained and protected from tampering for a minimum period of six months;
    - 1.8.9.2. made available to the Buyer on request.
- 1.9. The Supplier shall ensure that any Buyer's Data (including email) transmitted over any public network (including the Internet, mobile networks, or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10. The Supplier shall ensure that any Buyer's Data which resides on a mobile, removable, or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except

where the Buyer has given its prior written consent to an alternative arrangement.

- 1.11. The Supplier shall ensure that any device which is used to process Buyer's Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.

- 1.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Buyer's Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 1.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Buyer's Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.

The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 1.14. In the event of termination of Contract due to expiry, as a result of an Insolvency Event or for breach by the Supplier, all information assets provided, created or resulting from provision of the Services shall not be considered as the Supplier's assets and must be returned to the Buyer and written assurance obtained from an appropriate officer of the Supplier that these assets regardless of location and format have been fully sanitised throughout the Supplier's organisation in line with paragraph 1.15.

- 1.15. In the event of termination, equipment failure or obsolescence, all Buyer's Data and Buyer's Information, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC-approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area

Network (SAN) or on shared backup tapes, then the Supplier shall protect (and ensure that any sub-contractor protects) the Buyer's Information and Buyer's Data until such time, which may be long after termination or expiry of the Contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- 1.16. Access by Supplier Staff to Buyer's Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Buyer. All Supplier Staff must complete this process before access to Buyer's Data is permitted. [Any Supplier Staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact].
- 1.17. All Supplier Staff who handle Buyer's Data shall have annual awareness training in protecting information.
- 1.18. Notwithstanding any other provisions as to business continuity and disaster recovery in the Contract, the Supplier shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency, or crisis to the Services delivered. If an ISO 22301 certificate is not available, the supplier will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This must include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19. Any suspected or actual breach of the confidentiality, integrity, or availability of Buyer's Data, including user credentials, used or handled while providing the Services shall be recorded as a Security Incident. This includes any non-compliance with the Departmental Security Requirements and these provisions, or other security standards pertaining to the solution.

Security Incidents shall be reported to the Buyer immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If Security Incident reporting has been delayed by more than 24 hours, the Supplier should provide an explanation about the delay.

Security Incidents shall be reported through the Buyer's nominated system or service owner.

Security Incidents shall be investigated by the Supplier with outcomes being notified to the Buyer.

- 1.20. The Supplier shall ensure that any Supplier ICT systems and hosting environments that are used to handle, store or process Buyer's Data, including Supplier ICT connected to Supplier ICT systems used to handle, store or process Buyer's Data, shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Services being provided are to be shared with the Buyer in full without modification or redaction and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required, to be determined by the Buyer upon review of the ITHC findings.
- 1.21. The Supplier or sub-contractors providing the Services will provide the Buyer with full details of any actual or future intent to develop, manage, support, process, or store Buyer's Data outside of the UK mainland. The Supplier or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Buyer.
- 1.22. The Buyer reserves the right to audit the Supplier or sub-contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Supplier's, and any sub-contractors', compliance with the paragraphs contained in this Schedule.
- 1.23. The Supplier and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Buyer. This will include obtaining any necessary professional security resources required to support the Supplier's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- 1.24. Where the Supplier is delivering an ICT solution to the Buyer they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Buyer's Policy. The Supplier will provide the Buyer with evidence of compliance for the solutions and services to be delivered. The Buyer's expectation is that the Supplier shall provide written evidence of:
  - 1.24.1. compliance with HMG Minimum Cyber Security Standard.

- 1.24.2. any existing security assurance for the Services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification (e.g., United Kingdom Accreditation Service).
- 1.24.3. any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
- 1.24.4. documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be, and date expected.

Additional information and evidence to that listed above may be required to ensure compliance with DfE security requirements as part of the DfE security assurance process. Where a request for evidence or information is made by the Buyer, the Supplier will acknowledge the request within 5 working days and either provide the information within that timeframe, or, if that is not possible, provide a date when the information will be provided to the Buyer. In any case, the Supplier must respond to information requests from the Buyer needed to support the security assurance process promptly and without undue delay.

- 1.25. The Supplier shall contractually enforce all these Departmental Security Requirements onto any third-party suppliers, sub-contractors or partners who could potentially access Buyer's Data in the course of providing the Services.
- 1.26. The Supplier shall comply with the [NCSC's social media guidance: how to use social media safely](#) for any web and social media-based communications. In addition, any Communications Plan deliverable must include a risk assessment relating to the use of web and social media channels for the programme, including controls and mitigations to be applied and how the NCSC social media guidance will be complied with. The Supplier shall implement the necessary controls and mitigations within the plan and regularly review and update the risk assessment throughout the contract period. The Buyer shall have the right to review the risks within the plan and approve the controls and mitigations to be implemented, including requiring the Supplier to implement any additional reasonable controls to ensure risks are managed within the Buyer's risk appetite.
- 1.27. Any Supplier ICT system used to handle, store, or process the Buyer's Data, including any Supplier ICT systems connected to systems that handle, store, or process the Buyer's Data, must have in place protective monitoring at a level that is commensurate with the security risks posed to those systems and the data held. The Supplier shall provide evidence to the Buyer upon request of the protective monitoring arrangements in place needed to assess compliance with this requirement.

## Schedule 19 (Cyber Essentials Scheme)

### 1. Definitions

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

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>"Cyber Essentials Basic Certificate"</b>	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form;
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2. What Certification do you need

- 2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate prior the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under this Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during this Contract Period of this Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each

anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data the Supplier shall deliver to the Buyer evidence of:

2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and

2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.

2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for Material Default and the consequences of termination in Clause 14.5.1 shall apply.

2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Scheme Data require the Subcontractor to provide a valid Cyber Essentials Certificate, at the equivalent level to that held by the Supplier. The Supplier cannot require the Subcontractor to commence the provision of Deliverables under the Sub-Contract until the Subcontractor has evidenced to the Supplier that it holds a valid Cyber Essentials Certificate.

2.6 The Supplier must manage, and must ensure that all Subcontractors manage, all end-user devices used by the Supplier and the Subcontractor on which Cyber Essentials Scheme Data is processed by ensuring those devices are within the scope of the current Cyber Essentials Certificates held by the Supplier and the Subcontractor, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Deliverables.

2.7 This Schedule shall survive termination or expiry of this Contract.

3.



Certificate - Cyber  
Essentials - MM glob

Copy of Cyber Security Certification -



## **Schedule 20 (Processing Data)**

### **1. Status of the Controller**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
- 1.1.1 "Controller" in respect of the other Party who is "Processor";
  - 1.1.2 "Processor" in respect of the other Party who is "Controller";
  - 1.1.3 "Joint Controller" with the other Party;
  - 1.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller",
- in respect of certain Personal Data under a Contract and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

### **2. Where one Party is Controller and the other Party its Processor**

- 2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.3 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:
- 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 2.4.1 process that Personal Data only in accordance with Annex 1 (Processing Personal Data) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

- 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, 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.
- 2.4.3 ensure that:
- (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Annex 1 (Processing Personal Data));
  - (b) it uses best endeavours 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 Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (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 Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.4.4 not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:

- (i) where the transfer is subject to UK GDPR:
      - (A) the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "**IDTA**"); or
      - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.
- 2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;
  - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
- 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 2.5.6 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
  - 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

2.11 Before allowing any Subprocessor to Process any Personal Data related to this Contract, the Processor must:

- 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
- 2.11.2 obtain the written consent of the Controller;
- 2.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
- 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.

2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.

2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

### **3. Where the Parties are Joint Controllers of Personal Data**

In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 (Joint Controller Agreement) to this Schedule 20 (Processing Data).

### **4. Independent Controllers of Personal Data**

- 4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 4.2 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.
- 4.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 4.2 of this Schedule 20 above, 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.
- 4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.
- 4.5 The Parties shall only provide Personal Data to each other:
  - 4.5.1 to the extent necessary to perform their respective obligations under this Contract;

- 4.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
- 4.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
  - (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable); or
  - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:
    - (i) where the transfer is subject to UK GDPR:
      - (A) the International Data Transfer Agreement (the "**IDTA**") ""as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
      - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the transferring Party 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 non-transferring Party in meeting its obligations); and

- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 4.5.4 where it has recorded it in Annex 1 (Processing Personal Data).
- 4.6 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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 4.7 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**Request Recipient**"):
  - 4.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 4.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (a) 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
    - (b) 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.
- 4.9 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to this Contract and shall:
  - 4.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
  - 4.9.2 implement any measures necessary to restore the security of any compromised Personal Data;

- 4.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 4.9.4 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.
- 4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (Processing Personal Data).
- 4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Contract which is specified in Annex 1 (Processing Personal Data).
- 4.12 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 4.2 to 4.12 of this Schedule 20.



## Annex 1 - Processing Personal Data

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
  - 1.1 The contact details of the Buyer's Data Protection Officer are:  
<redacted> <redacted> <redacted> <redacted>
  - 1.1 The contact details of the Supplier's Data Protection Officer are:  
<redacted> <redacted> <redacted> <redacted>
  - 1.2 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
  - 1.3 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p><b>Local authority contact information:</b></p> <ul style="list-style-type: none"> <li>● <b>Name</b></li> <li>● <b>LA Email address and telephone number</b></li> </ul>
Subject matter of the Processing	<p>There is no intent throughout this programme to obtain personal data from members of the public. The successful supplier will work with LAs to consider broader trends in their data and offer diagnostic support [detailed below]. To enable the supplier to work to support the individual LAs part of the programme they will need contact details of relevant staff in the LA to organise meetings etc. To enable the supplier to fulfil requirement 2 they will need to have LA staff contact details to invite them to events and enable good practice sharing. In seeking the views and feedback from existing and prospective foster carers they may need their contact details but this will vary depending on the LA.</p> <p>It is likely that DfE will conduct a light touch EOI process to identify the LAs who would be interested in receiving the support from the supplier and possibly their availability in late 2023 and early 2024, in this case those LAs and the contact details they provide will be passed onto the supplier to contact and provide support to.</p>

Description	Details
Duration of the Processing	Personal Data will be Processed for the duration of the contract from 01 Dec 2023 to 31 March 2025 (to 31 March 2026 if contract is extended)
Nature and purposes of the Processing	<p>The Processor will process personal information for the following purposes:</p> <ul style="list-style-type: none"> <li>• Collect information provided by the local authority and stakeholders during the diagnostic visit</li> <li>• Store information available in the public domain relating to local authorities</li> <li>• Store and organise the information collected to produce management reports for the Department for Education</li> <li>• Store and organise the information collected to produce a diagnostic report for each participating local authority.</li> </ul>
Type of Personal Data being Processed	<p>Local authority contact information:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• LA Email address and telephone number</li> </ul>
Categories of Data Subject	Local authority staff contacts
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	Project records will be retained in accordance with the contractual and relevant legal requirements and stored in the processors secure information management system.

Description	Details
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway	Information will be stored on the processors secure SharePoint site. Information will be stored in the UK and the project team will only access the information whilst in the UK.
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	Data protection training has been provided and the team will be required to attend regular refresher privacy and data protection briefing to reinforce the importance of personal information.

## **Annex 2 - Joint Controller Agreement – not applicable**

### **1. Joint Controller Status and Allocation of Responsibilities**

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph 2 of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs 4.2-4.12 of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [Supplier/Buyer]:
  - 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using best endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
  - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### **2. Undertakings of both Parties**

- 2.1 The Supplier and the Buyer each undertake that they shall:
  - 2.1.1 report to the other Party every [x] months on:
    - (a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

- (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of this Contract during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 4.12(a) to 2.1.1(e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.2 and 4.12(c) to 2.1.1(e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

- 2.1.7 use best endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (a) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
  - (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event 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;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- 2.1.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
  - (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as agreed with the non-transferring Party which could include:
    - (i) where the transfer is subject to UK GDPR:
      - (A) the UK International Data Transfer Agreement (the "IDTA"), as published by the Information

- Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
  - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
  - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the transferring Party 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 non-transferring Party in meeting its obligations); and
  - (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.
- 2.2 Each Joint Controller shall use best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

### 3. Data Protection Breach

- 3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within forty eight (48) hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the Buyer and its advisors with:
  - 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;

- 3.1.2 all reasonable assistance, including:
- (a) co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (b) co-operation with the other Party including using such best endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Data Loss Event;
  - (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or
  - (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Paragraph 3.2.
- 3.2 Each Party shall use best endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event which is the fault of that Party as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within forty eight (48) hours of the Data Loss Event relating to the Data Loss Event, in particular:
- 3.2.1 the nature of the Data Loss Event;
  - 3.2.2 the nature of Personal Data affected;
  - 3.2.3 the categories and number of Data Subjects concerned;
  - 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
  - 3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and
  - 3.2.6 describe the likely consequences of the Data Loss Event.

#### **4. Audit**

- 4.1 The Supplier shall permit:
- 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or



- 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to this Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.
- 4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. Impact Assessments

The Parties shall:

- 5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 UK GDPR.

## 6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner, or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner, or any other regulatory authority.

## 7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Data Loss Event ("**Financial Penalties**") then the following shall occur:
  - 7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Data Loss Event, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Data Loss Event. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Data Loss Event;

- 7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Data Loss Event, in that it is not a Data Loss Event that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Data Loss Event; or
- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Data Loss Event and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).
- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such Data Loss Event. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "**Claim Losses**"):
  - 7.3.1 if the Buyer is responsible for the relevant Data Loss Event, then the Buyer shall be responsible for the Claim Losses;
  - 7.3.2 if the Supplier is responsible for the relevant Data Loss Event, then the Supplier shall be responsible for the Claim Losses: and
  - 7.3.3 if responsibility for the relevant Data Loss Event is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the Data Loss Event and the legal and financial obligations of the Buyer.

## 8. Termination

If the Supplier is in Material Default under any of its obligations under this Annex 2 (Joint Controller Agreement), the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 14 of the Core Terms (Ending the contract) and the consequences of termination in Clause 14.5.1 of the Core Terms shall apply.

## **9. Sub-Processing**

In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- 9.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing this Contract).

Contract Details		
This variation is between:	<b>[insert name of Buyer] ("the Buyer")</b> And <b>[insert name of Supplier] ("the Supplier")</b>	
Contract name:	<b>[insert name of contract to be changed] ("this Contract")</b>	
Contract reference number:	<b>[insert contract reference number]</b>	
Details of Proposed Variation		
Variation initiated by:	<b>[delete as applicable: Buyer/Supplier]</b>	
Variation number:	<b>[insert variation number]</b>	
Date variation is raised:	<b>[insert date]</b>	
Proposed variation		
Reason for the variation:	<b>[insert reason]</b>	
An Impact Assessment shall be provided within:	<b>[insert number] days</b>	
Impact of Variation		
Likely impact of the proposed variation:	<b>[Supplier to insert assessment of impact]</b>	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]</b></li> </ul>	
Financial variation:	Original Contract Value:	£ <b>[insert amount]</b>
	Additional cost due to variation:	£ <b>[insert amount]</b>
	New Contract value:	£ <b>[insert amount]</b>

1. This Variation must be agreed and signed by both Parties to this Contract and shall only be effective from the date it is signed by the Buyer.
2. Words and expressions in this Variation shall have the meanings given to them in this Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

---

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

Signature

Date

Name (in Capitals)

Address

## **Schedule 22 (Insurance Requirements)**

### **1. The insurance you need to have**

- 1.1 The Supplier 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 Supplier shall ensure that each of the Insurances is effective no later than the Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 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 London market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in London insurance market; and
  - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### **2. How to manage the insurance**

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables 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 Supplier 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.

### **3. What happens if you aren't insured**

- 3.1 The Supplier 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.

- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Supplier shall immediately notify the Buyer of such failure. The Supplier and Buyer shall agree and implement the relevant measures to rectify such failure within 10 Working Days failing which the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier or take such other steps to rectify the failure to purchase or maintain any of the Insurances in full force an effect.

#### **4. Evidence of insurance you must provide.**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form of a certificate of coverage, , that the Insurances are in force and effect and meet in full the requirements of this Schedule.

#### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in this Schedule.
- 5.2 Where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Deliverables and/or this Contract, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

#### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall use best endeavours to ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant 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.



## **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner provided that if the Supplier reasonably determines that such cooperation and assistance would put it in breach of the obligations in its insurance policies, it shall:
- 7.1.1 notify the Buyer;
  - 7.1.2 provide the Buyer with reasons why complying with this clause 7.1 would put it in breach; and
  - 7.1.3 propose to the Buyer a solution for managing the conflicting obligations.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of 10% of the maximum limit under the relevant insurance of Mott MacDonald Group Limited and subsidiary companies (together, the "Group") relating to or arising out of the provision of the Deliverables or this Contract 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 Buyer) full details of the incident giving rise to the claim. material details of the incident giving rise to the claim. .
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- .

## **ANNEX: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

#### **1. Insured**

The Supplier

#### **2. Interest**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Deliverables and in connection with this Contract.

#### **3. Limit of indemnity**

3.1 Not less than £1 million in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

#### **4. Territorial limits**

**United Kingdom**

#### **5. Period of insurance**

From the date of this Contract for the period of this Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

#### **6. Cover features and extensions**

Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with this Contract and for which the Supplier is legally liable.

#### **7. Principal exclusions**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

**8. Maximum deductible threshold**

Not to exceed £1.5 million for each and every third-party property damage claim (personal injury claims to be paid in full).

**PART B: UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

## Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Notifiable Default:	<b>[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]</b>		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by Buyer:		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Notifiable Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Notifiable Default:	[add effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Notifiable Default	[X] Working Days		
Steps taken to prevent recurrence of Notifiable Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	

	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## **Schedule 27 (Key Subcontractors)**

### **1. Restrictions on certain subcontractors**

- 1.1 The Supplier is entitled to sub-contract its obligations under this Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor 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 Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer 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 Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.

- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the this Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Contract in respect of:
    - a) the data protection requirements set out in Clause 18 (Data protection);
    - b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
    - c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this Contract) and 14.5 (What happens if this Contract ends) of this Contract;
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
  - 1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

## Schedule 29 (Key Supplier Staff)

### 1. Key Supplier Staff

- 1.1 The Annex 1 (Key Role) to this Schedule lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("**Key Staff**").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
  - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff 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 Deliverables; and
  - 1.5.5 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 Staff whom they have replaced.



- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

## Annex 1- Key Roles

Key Role	Key Staff	Contact Details
Account Lead	<redacted> <redacted>	<redacted> <redacted>
Project Principal	<redacted> <redacted>	<redacted> <redacted>
Project Manager	<redacted> <redacted>	<redacted> <redacted>
Social Care Technical Lead	<redacted> <redacted>	<redacted> <redacted>
CoramBAAF MD	<redacted> <redacted>	<redacted> <redacted>
Diagnostic Lead	<redacted> <redacted>	<redacted> <redacted>

## Schedule 30 (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>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables;
<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>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule; and
<b>"Virtual Library"</b>	the data repository hosted by the Supplier containing the accurate information about this Contract and the Deliverables in accordance with Paragraph 2.2 of this Schedule.

## **2. Supplier must always be prepared for contract exit**

- 2.1 The Supplier shall within thirty (30) days from the Effective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Supplier shall within thirty (30) days from the Effective Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
  - 2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
  - 2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs (consistent with Annex 1 of Schedule 36 (Intellectual Property) which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables, and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.
- 2.3 The Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).
- 2.4 The Supplier shall:
  - 2.4.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
  - 2.4.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
- 2.5 Each Party shall appoint an Exit Manager within three (3) Months of the Effective Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### 3. Assisting re-competition for Deliverables

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer 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 Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### 4. Exit Plan

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
- 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 how the Exit Information is obtained;
  - 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
  - 4.3.3 the management structure to be employed during the Termination Assistance Period;
  - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;

- 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
  - 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
  - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
  - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (Charges). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.
- 4.5 The Supplier shall:
- 4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - (a) every six (6) months throughout the Contract Period;
    - (b) no later than [twenty (20) Working Days] after a request from the Buyer 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 Deliverables (including all changes under the Variation Procedure); and
- 4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.7 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
  - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
  - 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **6. Termination Assistance Period**

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
  - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
  - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
  - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7. Obligations when the contract is terminated**

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
- 7.2.1 cease to use the Government Data;
  - 7.2.2 vacate any Buyer Premises;
  - 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects



- contained thereon, other than fair wear and tear, which is caused by the Supplier;
- 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
- (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
  - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.

## **8. Assets, Sub-contracts and Software**

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
  - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
  - 8.2.2 which, if any, of:
    - (a) the Exclusive Assets that are not Transferable Assets; and
    - (b) the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and

- 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
  - 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
  - 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

## **9. No charges**

Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

## **10. Dividing the bills**

All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1 the amounts shall be annualised and divided by three hundred and sixty five (365) to reach a daily rate;
- 10.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **Annex 1: Scope of Termination Assistance**

### **1. Scope of Termination Assistance**

- 1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
  - 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - 1.1.3 providing details of work volumes and staffing requirements over the twelve (12) Months immediately prior to the commencement of Termination Assistance;
  - 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of twelve (12) Months after the Termination Assistance Period;
  - 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
  - 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
  - 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
  - 1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;
  - 1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
  - 1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
  - 1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) Months afterwards for the purpose of the smooth

transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:

- (a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
- (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;

1.1.12 knowledge transfer services, including:

- (a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
- (b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
- (c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- (d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- (e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier will:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and
- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:
  - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and
- 1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## Schedule 36 (Intellectual Property Rights)

<b>Part A: Intellectual Property Rights (no ICT Services)</b>	<b>1</b>
Option 1 – NOT USED	1
1. General Provisions and Ownership of IPR	1
2. Licences in respect of Supplier Existing IPR	2
3. Licences granted by the Buyer	4
4. Licences in respect of Third-party IPR	5
5. Open Licence Publication	6
6. Patents	7
Option 2	8
11. General Provisions and Ownership of IPR	8
12. Licences in respect of Supplier Existing IPR	9
13. Licences granted by the Buyer	11
14. Buyer approval for Supplier to exploit New IPR and Buyer Existing IPR	12
15. Provision of information on New IPR	13
16. Licences in respect of Third-party IPR	13
17. Patents	14
Option 3 – NOT USED	15
21. General Provisions and Ownership of IPR	15
22. Licences in respect of New IPR and Supplier Existing IPR	16
23. Buyer approval for Supplier to exploit Buyer Existing IPR	18
24. Licences granted by the Buyer	19
25. Provision of information on New IPR	19
26. Licences in respect of Third-party IPR	20
27. Patents	21
Option 4 – NOT USED	22
31. General Provisions and Ownership of IPR	22
32. Licences in respect of New IPR and Supplier Existing IPR	23
33. Buyer approval for Supplier to exploit Buyer Existing IPR	25
34. Licences granted by the Buyer	26
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# Part A: Intellectual Property Rights (no ICT Services)

## Option 1 – not used

### 1. General Provisions and Ownership of IPR

- 1.1. Any New IPR created under this Contract is owned by the Buyer.
- 1.2. Each Party keeps ownership of its own Existing IPR.
- 1.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 1.1 and 1.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 1.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 1.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 2 and 4, the Supplier must, within 10 Working Days notify the Buyer:
  - 1.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 1.7.2. the Deliverables affected.
- 1.8. For the avoidance of doubt:
  - 1.8.1. except as provided for in Paragraphs 2.3.2.2(c)(1) or 4.1.2.2 and 4.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 2 and 4;
  - 1.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

- 1.8.2.1. sections 55 and 56 of the Patents Act 1977;
- 1.8.2.2. section 12 of the Registered Designs Act 1949; or
- 1.8.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## **2. Licences in respect of Supplier Existing IPR**

- 2.1. The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 2.3 in respect of each Deliverable where:
  - 2.1.1. the Supplier Existing IPR is embedded in the Deliverable;
  - 2.1.2. the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for its intended purpose; or
  - 2.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR.
- 2.2. The categories of Supplier Existing IPR described in Paragraph 2.1 are mutually exclusive.
- 2.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
  - 2.3.1. in the case of Supplier Existing IPR embedded in a Deliverable:
    - 2.3.1.1. has no restriction on the identity of any transferee or sub-licensee;
    - 2.3.1.2. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 2.4; and
    - 2.3.1.3. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;
  - 2.3.2. in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
    - 2.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 2.4;

2.3.2.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

2.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

2.3.2.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph.

2.4. For the purposes of Paragraph 2.3, the relevant purposes are:

- 2.4.1. to allow the Buyer or any End User to receive and use the Deliverables;
- 2.4.2. to allow the Buyer to commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items; and
- 2.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### **3. Licences granted by the Buyer**

- 3.1. The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that:
  - 3.1.1. is non-exclusive, royalty-free and non-transferable;
  - 3.1.2. is sub-licensable to any Sub-contractor where:
    - 3.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and
    - 3.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;
  - 3.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations under this Contract; and
  - 3.1.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.
- 3.2. When the licence granted under Paragraph 3.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 3.1.2:
  - 3.2.1. immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);
  - 3.2.2. either:
    - 3.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or
    - 3.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and
  - 3.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

#### **4. Licences in respect of Third-party IPR**

4.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

4.1.1. Approval is granted by the Buyer; and

4.1.2. one of the following conditions is met:

4.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.2;

4.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 4.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

4.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

4.2. The Third Party IPR licence referred to in Paragraph 4.1 is the licence set out in Paragraph 2.3 as if:

4.2.1. the term Third Party IPR were substituted for the term Supplier Existing IPR; and

4.2.2. the term third party were substituted for the term Supplier, in each place they occur.

## 5. Open Licence Publication

- 5.1. Subject to Paragraph 5.5, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.
- 5.2. The Supplier warrants that:
  - 5.2.1. the New IPR Items are suitable for release under Open Licence;
  - 5.2.2. in developing the New IPR is has used reasonable endeavours to ensure that:
    - 5.2.2.1. the publication by the Buyer will not:
      - (a) allow a third party to use them in any way that could reasonably be foreseen to compromise the operation or security of the New IPRs;
      - (b) cause any harm or damage to any party using them; or
      - (c) breach the rights of any third party;
    - 5.2.2.2. they do not contain any material which would bring the Buyer into disrepute if published.
- 5.3. The Supplier must not include in the New IPR provided for publication by Open Licence any Supplier Existing IPRs unless the Supplier consents to:
  - 5.3.1. their publication by the Buyer under Open Licence; and
  - 5.3.2. their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Buyer.
- 5.4. The Supplier must supply any or all New IPR Items in a format (whether it is provided in any other format or not) suitable for publication under an Open Licence (the **Open Licence Publication Material**) within thirty (30) Working Days of written request from the Buyer (**Buyer Open Licence Request**).
- 5.5. The Supplier may within fifteen (15) Working Days of Buyer Open Licence Request under Paragraph 5.4 request in writing that the Buyer excludes all or part of:
  - 5.5.1. the New IPR Items; or
  - 5.5.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 5.4,

from Open Licence publication.

- 5.6. The Supplier's request under Paragraph 5.5 must include the Supplier's assessment of the impact the Buyer's agreeing to the request would have on its ability to publish other New IPR Items under an Open Licence.
- 5.7. Any decision to Approve any such request from the Supplier under Paragraph 5.5 shall be at the Buyer's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

## **6. Patents**

- 6.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.



## Option 2

### 11. General Provisions and Ownership of IPR

- 11.1. Any New IPR created under this Contract is owned by the Buyer.
- 11.2. Each Party keeps ownership of its own Existing IPR.
- 11.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 11.1 and 11.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 11.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 11.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 11.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 11.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 12 and 16, the Supplier must, within 10 Working Days notify the Buyer:
  - 11.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 11.7.2. the Deliverables affected.
- 11.8. For the avoidance of doubt:
  - 11.8.1. except as provided for in Paragraphs 12.3.2.2(c)(1) or 16.1.2.2 and 16.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 12 and 16;
  - 11.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 11.8.2.1. Sections 55 and 56 of the Patents Act 1977;

11.8.2.2. section 12 of the Registered Designs Act 1949; or

11.8.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## **12. Licences in respect of Supplier Existing IPR**

12.1. The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 12.3 in respect of each Deliverable where:

12.1.1. the Supplier Existing IPR is embedded in the Deliverable;

12.1.2. the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 12.4; or

12.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR.

12.2. The categories of Supplier Existing IPR described in Paragraph 12.1 are mutually exclusive.

12.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

12.3.1. in the case of Supplier Existing IPR embedded in a Deliverable:

12.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

12.3.1.2. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 12.4; and

12.3.1.3. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

12.3.2. in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

12.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 12.4;

12.3.2.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

12.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

12.3.2.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph.

12.4. For the purposes of Paragraph 12.3, the relevant purposes are:

12.4.1. to allow the Buyer or any End User to receive and use the Deliverables;

12.4.2. to allow the Buyer to commercially exploit the New IPR and New IPR Items; and

12.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### **13. Licences granted by the Buyer**

13.1. The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that either:

13.1.1. where terms are agreed by the Buyer and Supplier under Paragraph 14, is on those terms; or

13.1.2. where terms are not agreed by the Buyer and Supplier under Paragraph 14:

13.1.2.1. is non-exclusive, royalty-free and non-transferable;

13.1.2.2. is sub-licensable to any Sub-contractor where:

(a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

(b) the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier under this Paragraph; and

13.1.2.3. allows the Supplier and any sub- licensee to use, copy and adapt any Buyer Existing IPR for the purpose of fulfilling its obligations under this Contract; and

13.1.2.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.

13.2. When the licence granted under Paragraph 13.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 13.1.2:

13.2.1. immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);

13.2.2. either:

13.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or

13.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and

- 13.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

#### **14. Buyer approval for Supplier to exploit New IPR and Buyer Existing IPR**

- 14.1. Before using, copying or adapting any New IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.
- 14.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in that licence.
- 14.3. The Supplier must provide a proposal setting out:
  - 14.3.1. the purpose for which it proposes to use the New IPR;
  - 14.3.2. the activities the Supplier proposes to undertake with or in respect of the New IPR;
  - 14.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and
  - 14.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.
- 14.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:
  - 14.4.1. the Buyer's reputation; or
  - 14.4.2. the Buyer's interests.
- 14.5. Where the Buyer has not:
  - 14.5.1. approved or declined proposal; or
  - 14.5.2. required further information, within 20 Working Days of the later of:
    - 14.5.3. the date the proposal was first provided to the Buyer; or
    - 14.5.4. the date on which further information was provided to the Buyer,then the proposal is, for the purposes of this Contract, approved.

## **15.Provision of information on New IPR**

15.1. The Buyer may, at any time, require the Supplier to provide information on:

15.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

15.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

15.2. The Supplier must provide the information required by the Buyer:

15.2.1. within twenty (20) Working Days of the date of the requirement; and

15.2.2. in the form and with the content specified by the Buyer.

## **16.Licences in respect of Third-party IPR**

16.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

16.1.1. Approval is granted by the Buyer; and

16.1.2. one of the following conditions is met:

16.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 16.2;

16.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 16.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

16.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

16.2. The Third Party IPR licence referred to in Paragraph 16.1 is the licence set out in Paragraph 12.3 as if:

16.2.1. the term Third Party IPR were substituted for the term Supplier Existing IPR; and

16.2.2. the term third party were substituted for the term Supplier, in each place they occur.

## **17. Patents**

17.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 3 – not used

### 21. General Provisions and Ownership of IPR

- 21.1. Any New IPR created under this Contract is owned by the Supplier.
- 21.2. Each Party keeps ownership of its own Existing IPR.
- 21.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 21.1 and 21.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 21.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 21.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 21.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 21.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 22 and 26, the Supplier must, within 10 Working Days notify the Buyer:
  - 21.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 21.7.2. the Deliverables affected.
- 21.8. For the avoidance of doubt:
  - 21.8.1. except as provided for in Paragraphs 22.2.2.2(c)(1) or 26.1.2.2 and 26.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 22 and 26;
  - 21.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 21.8.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 21.8.2.2. section 12 of the Registered Designs Act 1949; or



21.8.2.3.sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## **22.Licences in respect of New IPR and Supplier Existing IPR**

22.1. The Supplier grants the Buyer a Supplier New and Existing IPR Licence on the terms set out in Paragraph 22.2.

22.2. The Supplier New and Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

22.2.1. in the case of New IPR and Supplier Existing IPR embedded in a Deliverable:

22.2.1.1. allows the Buyer, any transferee or any sublicensee to use, copy and adapt, the New IPR and Supplier Existing IPR;

22.2.1.2. has no restriction on the identity of any transferee or sublicensee;

22.2.2. in the case of New IPR and Supplier Existing IPR is necessary for the Buyer or any End User to use the Deliverable and:

22.2.2.1. allows the Buyer, any transferee or any sublicensee to use and copy but not disassemble or reverse engineer adapt the relevant New IPR and Supplier Existing IPR;

22.2.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.3. in the case of New IPR that is used to provide the Deliverable:

22.2.3.1. allows the Buyer, any transferee and any sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR and Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

22.2.3.2. has no restriction on the identity of any transferee or sublicensee.

22.2.4. in the case of Supplier Existing IPR where the Deliverable is a is a customisation or adaptation of Supplier Existing IPR:

22.2.4.1. allows the Buyer, any transferee and any sublicensee to use, copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

22.2.4.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.4.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

22.3. The Supplier New and Existing IPR Licence provided for under Paragraph 22.2 is subject to the restriction that no transfer or sublicense of the Supplier New IPR and Supplier Existing IPR shall purport to grant to the transferee or sub-licensee (as applicable) any wider rights than those granted to the Buyer under this Paragraph.

22.4. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

22.4.1. the Supplier New and Existing IPR Licence is unaffected; and

22.4.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the Supplier New and Existing IPR Licence.

22.5. The termination or expiry of this Contract does not terminate the Supplier New and Existing IPR Licence.

### **23. Buyer approval for Supplier to exploit Buyer Existing IPR**

23.1. Before using, copying or adapting any Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

23.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

23.3. The Supplier must provide a proposal setting out:

23.3.1. the purpose for which it proposes to use the Buyer Existing IPR;

23.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR;

23.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and

23.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.

23.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

23.4.1. the Buyer's reputation; or

23.4.2. the Buyer's interests.

23.5. Where the Buyer has not:

23.5.1. approved or declined the proposal; or

23.5.2. required further information,

within 20 Working Days of the later of:

23.5.3. the date the proposal was first provided to the Buyer; or

23.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

## **24. Licences granted by the Buyer**

24.1. Subject to Paragraph 23, the Buyer grants the Supplier a licence to the Buyer Existing IPR that is perpetual, non-exclusive, royalty-free and non-transferable;

24.1.1. is sub-licensable to any Sub-contractor where:

24.1.1.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

24.1.1.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

24.1.2. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

24.1.2.1. fulfilling its obligations under this Contract; and

24.1.2.2. commercially exploit the New IPR.

## **25. Provision of information on New IPR**

25.1. The Buyer may, at any time, require the Supplier to provide information on:

25.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

25.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

25.2. The Supplier must provide the information required by the Buyer:

25.2.1. within twenty (20) Working Days of the date of the requirement; and

25.2.2. in the form and with the content specified by the Buyer.

## **26. Licences in respect of Third-party IPR**

26.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

26.1.1. Approval is granted by the Buyer; and

26.1.2. one of the following conditions is met:

26.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 22.2;

26.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR Licence as set out in Paragraph 26.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

26.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

26.2. The Third Party IPR licence referred to in Paragraph 26.1 is the licence set out in Paragraph 22.2 as if:

26.2.1. the term Third Party IPR were substituted for the term New IPR or Supplier Existing IPR; and

26.2.2. the term third party were substituted for the term Supplier,  
in each place they occur.

## **27. Patents**

27.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 4- not used

### 31. General Provisions and Ownership of IPR

- 31.1. Any New IPR created under this Contract is owned by the Supplier.
- 31.2. Each Party keeps ownership of its own Existing IPR.
- 31.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 31.1 and 31.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 31.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 31.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 31.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 31.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 32 and 36, the Supplier must, within 10 Working Days notify the Buyer:
  - 31.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 31.7.2. the Deliverables affected.
- 31.8. For the avoidance of doubt:
  - 31.8.1. except as provided for in Paragraphs 32.2.2.2(c)(1) or 36.1.2.2 and 36.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 32 and 36;
  - 31.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 31.8.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 31.8.2.2. section 12 of the Registered Designs Act 1949; or

31.8.2.3.sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

### **32.Licences in respect of New IPR and Supplier Existing IPR**

32.1. The Supplier grants the Buyer a Supplier New and Existing IPR Licence on the terms set out in Paragraph 32.2.

32.2. The Supplier New and Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

32.2.1. in the case of New IPR and Supplier Existing IPR embedded in a Deliverable:

32.2.1.1. allows the Buyer, any transferee or any sublicensee to use, copy and adapt the New IPR and Supplier Existing IPR;

32.2.1.2. has no restriction on the identity of any transferee or sublicensee;

32.2.2. in the case of New IPR and Supplier Existing IPR is necessary for the Buyer or any End User to use the Deliverable and:

32.2.2.1. allows the Buyer, any transferee or any sublicensee to use, copy but not adapt, disassemble or reverse engineer the New IPR and Supplier Existing IPR;

32.2.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:



- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.3. in the case of New IPR that is used to provide the Deliverable:

32.2.3.1. allows the Buyer, any transferee and any sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR and Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

32.2.3.2. has no restriction on the identity of any transferee or sublicensee.

32.2.4. in the case of Supplier Existing IPR where the Deliverable is a is a customisation or adaptation of Supplier Existing IPR:

32.2.4.1. allows the Buyer, any transferee and any sublicensee to use, copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

32.2.4.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.4.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

32.3. The Supplier New and Existing IPR Licence provided for under Paragraph 32.2 is subject to the restriction that no transfer or sublicense of the Supplier New and Existing IPR shall purport to grant to the transferee or sub-licensee (as applicable) any wider rights than those granted to the Buyer under this Paragraph.

32.4. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

32.4.1. the Supplier New and Existing IPR Licence is unaffected; and

32.4.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the Supplier New and Existing IPR Licence.

32.5. The expiry or earlier termination of this Contract does not terminate any Supplier New and Existing IPR Licence.

### **33. Buyer approval for Supplier to exploit Buyer Existing IPR**

33.1. Before using, copying or adapting any Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

33.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

33.3. The Supplier must provide a proposal setting out:

33.3.1. the purpose for which it proposes to use the Buyer Existing IPR;

33.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR;

33.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and

33.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.

33.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

33.4.1. the Buyer's reputation; or

33.4.2. the Buyer's interests.

33.5. Where the Buyer has not:

33.5.1. approved or declined the proposal; or

33.5.2. required further information,

within twenty (20) Working Days of the later of:

33.5.3. the date the proposal was first provided to the Buyer; or

33.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

### **34. Licences granted by the Buyer**

34.1. Subject to Paragraph 33, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

34.1.1. is perpetual, non-exclusive, royalty-free and non-transferable;

34.1.2. is sub-licensable to any Sub-contractor where:

34.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

34.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

34.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

34.1.3.1. fulfilling its obligations under this Contract;

34.1.3.2. commercially exploiting the New IPR.

### **35. Provision of information on New IPR**

35.1. The Buyer may, at any time, require the Supplier to provide information on:

35.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

35.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

35.2. The Supplier must provide the information required by the Buyer:

35.2.1. Within twenty (20) Working Days of the date of the requirement; and

35.2.2. in the form and with the content specified by the Buyer.

### **36. Licences in respect of Third-party IPR**

36.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

36.1.1. Approval is granted by the Buyer; and

36.1.2. one of the following conditions is met:

36.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 32.2;

36.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR Licence as set out in Paragraph 36.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

36.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

36.2. The Third Party IPR licence referred to in Paragraph 36.1 is the licence set out in Paragraph 32.2 as if:

36.2.1. the term Third Party IPR were substituted for the term New IPR or Supplier Existing IPR; and

36.2.2. the term third party were substituted for the term Supplier,  
in each place they occur.

### **37. Patents**

37.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 5 – not used

### 41.Royalties

41.1. The Supplier must provide a detailed proposal setting out:

41.1.1. the purpose for which it proposes to use the New IPR and the Buyer Existing IPR;

41.1.2. the activities the Supplier proposes to undertake with or in respect of the New IPR and the Buyer Existing IPR;

41.1.3. its proposed business plan, including:

41.1.3.1. the goods, services or software to be offered by the Supplier that use or incorporate the New IPR and the Buyer Existing IPR;

41.1.3.2. the relationship between the New IPR and the Buyer Existing IPR, and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods, services or software;

41.1.3.3. the target markets for those goods, services or software;

41.1.3.4. the estimated level of orders;

41.1.3.5. its marketing strategy;

41.1.3.6. details of the estimated costs, prices, revenues and profits;

41.1.3.7. the proposed financial benefit to the Buyer;

41.1.4. the impact of the proposal on the Services the Supplier provides under this Contract;

41.1.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the New IPR were it to enter into an arm's length commercial relationship with a third-party;

41.1.6. the terms on which the Supplier proposes to licence the Buyer Existing IPR from the Buyer;

41.1.7. any proposed Variations to this Contract; and

41.1.8. any additional agreement the Supplier proposes that it and the Buyer enter into;

- 41.1.9. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 41.1.10. any other information required by the Buyer.
- 41.2. Where the proposed financial benefit to the Buyer under Paragraph 41.1.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 41.3. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
  - 41.3.1. provide for the licencing of the New IPR to the Buyer on the same terms as in this Contract; and
  - 41.3.2. include a price that reflects the Charges.
- 41.4. The Supplier acknowledges that:
  - 41.4.1. the Buyer may refuse, or require changes to, the Supplier's proposal in its sole discretion and for any reason; and
  - 41.4.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
    - 41.4.2.1. public procurement; and
    - 41.4.2.2. subsidy control.
- 41.5. Where the Buyer agrees to the Supplier's proposal, with or without changes, that proposal will not have effect until both Parties have executed:
  - 41.5.1. any additional agreement to give effect to the proposal; and
  - 41.5.2. any consequential Variation to this Contract.
- 41.6. Any agreement between the Buyer and the Supplier entered into under Paragraph 41.5 must include provisions to the following effect:
  - 41.6.1. the calculation of royalties is based on the following formula:
$$R = NSV \times RR \times P$$

where:

R is the royalty payable on an individual item subject to the agreement;

NSV is the net sales value of the item, that is the price for which the Supplier sold the item to a third party after the deduction of normal trade discounts and excluding VAT or any other tax or duty based directly on the price of the item and payable by the purchaser;

RR is [*insert the royalty payable on the item, expressed as a percentage*]; and

P is the proportion that the New IPR bears to the whole of the item, expressed as a percentage, subject to the following:

41.6.1.1. the proportion that the New IPR bears to the item as a whole is an estimation of the effort required to develop the New IPR compared to the item as a whole;

41.6.1.2. P is 100% where, either:

(a) where the proportion of the New IPR to the item as a whole is 80% or greater; or

(b) it would not be practicable to create or produce the item without the New IPR.

41.6.2. all royalties are paid quarterly on the basis of the total sales of the item in that quarter;

41.6.3. each payment of royalties must be accompanied by a detailed statement showing:

41.6.3.1. the number of items sold in that quarter;

41.6.3.2. their net sales value; and

41.6.3.3. the royalties due to the Buyer;

41.6.4. the Supplier must keep true and accurate records and books of account containing all information and data necessary for the calculation of royalties, including, for the avoidance of doubt, the calculation of the net sales value and the estimation of P in the formula in Paragraph 41.6.1;

41.6.5. the Supplier must make such books and records available for inspection by the Buyer, or the Buyer's representative, whether physically or virtually, at any reasonable time specified by the Buyer.

## 42. Clawback

42.1. If, within three (3) years of its creation, the Supplier:



42.1.1. is not commercially exploiting any New IPR;

42.1.2. where the Supplier is not commercially exploiting any New IPR, is not, to the satisfaction of the Buyer, using its best endeavours to do so,

then, on written request from the Buyer:

42.1.2.1. the Supplier must promptly assign to the Buyer the New IPR or any specified New IPR Items; and

42.1.2.2. the licence to Buyer Existing IPR granted under Paragraph 34.1.3.2 terminates either:

(a) on the date specified in the notice; or

(b) where no date is specified in the notice, on the date the notice is received by the Supplier.

42.2. Each Party shall bear its own costs of preparing and executing any such assignment.

## Part B: Intellectual Property Rights (ICT Services) – NOT USED

## Option 1 – not used

### 1. Intellectual Property Rights – General Provisions

- 1.1. Each Party keeps ownership of its own Existing IPR.
- 1.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 1.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 3 and 4, the Supplier must, within 10 Working Days notify the Buyer:
  - 1.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 1.5.2. the Deliverables affected.
- 1.6. For the avoidance of doubt:
  - 1.6.1. except as provided for in Paragraphs 4.3.4.2(a) or 3.1.6.2 and 3.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 3 and 4;
  - 1.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 1.6.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 1.6.2.2. section 12 of the Registered Designs Act 1949; or
    - 1.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## 2. Ownership and delivery of IPR created under this Contract

- 2.1. Any New IPR and Specially Written Software is owned by the Buyer, including:
  - 2.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and
  - 2.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,(together, the **Software Supporting Materials**).
- 2.2. The Supplier must deliver to the Buyer:
  - 2.2.1. the Specially Written Software;
  - 2.2.2. any software elements of the New IPR;
  - 2.2.3. relevant Documentation; and
  - 2.2.4. all related Software Supporting Materials,within seven (7) days of:
  - 2.2.5. either:
    - 2.2.5.1. initial release or deployment; or
    - 2.2.5.2. if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and
  - 2.2.6. each subsequent release or deployment of the Specially Written Software and any software elements of the New IPR.
- 2.3. Where the Supplier delivers materials to the Buyer under Paragraph 2.2, it must do so in a format specified by the Buyer. Where the Buyer specifies the material is to be delivered on media, the Buyer becomes the owner of the media containing the material on delivery.
- 2.4. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.

## 3. Use of Supplier Existing IPRs and Third Party IPRs

- 3.1. The Supplier must not:

- 3.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;
  - 3.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable for any of the purposes set out in Paragraph 4.4; or
  - 3.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,
- unless one or more of the following conditions apply:
- 3.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;
  - 3.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:
    - 3.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
    - 3.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;
  - 3.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 3.1.4 and one of the following conditions is met:
    - 3.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.3, as if:
      - (a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and
      - (b) the term “third party” were substituted for the term Supplier,
- in each place they occur; or
- 3.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 3.1.6.1, all the following conditions are met:

- (a) the Supplier has notified the Buyer in writing giving details of:
    - (1) what licence terms can be obtained from the relevant third party; and
    - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
  - (b) the Buyer Approves the licence terms of one of those third parties; and
  - (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.
- 3.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:
- 3.2.1. maintained or supported by the developer; or
  - 3.2.2. made commercially available.

#### **4. Licences in respect of Supplier Existing IPR that is not COTS Software**

- 4.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 3, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 4.3 in respect of each Deliverable where:
  - 4.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;
  - 4.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 4.4; or
  - 4.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.
- 4.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 4.1 are mutually exclusive.
- 4.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

- 4.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:
  - 4.3.1.1. has no restriction on the identity of any transferee or sub-licensee;
  - 4.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 4.4;
  - 4.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 4.4; and
- 4.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
  - 4.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 4.4;
  - 4.3.2.2. is transferrable to only:
    - (a) a Crown Body;
    - (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
    - (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
      - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
      - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and
  - 4.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:
    - (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);
- 4.3.3. includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Deliverables; and
- 4.3.4. is subject to the restrictions that:
  - 4.3.4.1. no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;
  - 4.3.4.2. any transferee or sublicensee of the Supplier Existing IPR Licence must either:
    - (a) enter into a direct arrangement with the Supplier in the form set out in Annex 2; or
    - (b) enter into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).
- 4.4. For the purposes of Paragraphs 4.1 and 4.3, the relevant purposes are:
  - 4.4.1. to allow the Buyer or any End User to receive and use the Deliverables;
  - 4.4.2. to commercially exploit (including by publication under Open Licence) the New IPR, Specially Written Software and New IPR Items; and
  - 4.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

## **5. Licences granted by the Buyer**

- 5.1. The Buyer grants the Supplier a licence to the New IPR, Specially Written Software and Buyer Existing IPR that:
  - 5.1.1. is non-exclusive, royalty-free and non-transferable;
  - 5.1.2. is sub-licensable to any Sub-contractor where
    - 5.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and



- 5.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;
  - 5.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR, New IPR and Specially Written Software for the purpose of fulfilling its obligations under this Contract; and
  - 5.1.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.
- 5.2. When the licence granted under Paragraph 5.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 5.1.2:
  - 5.2.1. immediately cease all use of the Buyer Existing IPR, New IPR and Specially Written Software (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);
  - 5.2.2. either:
    - 5.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR, Specially Written Software and the Government Data; or
    - 5.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR, Specially Written Software and the Government Data (as the case may be); and
  - 5.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR, Specially Written Software and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

## **6. Open Licence Publication**

- 6.1. Subject to Paragraph 6.6, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items, including the:
  - 6.1.1. Specially Written Software;
  - 6.1.2. the software parts of the New IPR Items; and
  - 6.1.3. the Software Supporting Materials.

- 6.2. The Supplier must create all Specially Written Software, software elements of New IPR and Software Supporting Materials in a format (whether it is provided in any other format or not):
  - 6.2.1. suitable for publication by the Buyer as Open Licence; and
  - 6.2.2. based on open standards (where applicable).
- 6.3. The Supplier warrants that in developing the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials it has used reasonable endeavours to ensure that:
  - 6.3.1. publication by the Buyer will not:
    - 6.3.1.1. allow a third party to use them in any way that could reasonably be foreseen to compromise the operation or security of the Specially Written Software, New IPRs, the Buyer System or the Supplier System;
    - 6.3.1.2. cause any harm or damage to any party using them; or
    - 6.3.1.3. breach the rights of any third party; and
  - 6.3.2. they do not contain:
    - 6.3.2.1. any Malicious Software; or
    - 6.3.2.2. any material which would bring the Buyer into disrepute if published.
- 6.4. The Supplier must not include in the Specially Written Software, the software parts of the New IPR Items and the Software Supporting Materials provided for publication by Open Licence any Supplier Existing IPRs unless the Supplier consents to:
  - 6.4.1. their publication by the Buyer under Open Licence; and
  - 6.4.2. their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Buyer.
- 6.5. The Supplier must supply any or all the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials in a format suitable for publication under an Open Licence (the **Open Licence Publication Material**) within 30 Working Days of written request from the Buyer (**Buyer Open Licence Request**).
- 6.6. The Supplier may within ten (10) Working Days of a Buyer Open Licence Request under Paragraph 6.5 request in writing that the Buyer excludes all or part of:

- 6.6.1. the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials; or
  - 6.6.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 6.4,
- from Open Licence publication.
- 6.7. The Supplier's request under Paragraph 6.6 must include the Supplier's assessment of the impact the Buyer's agreeing to the request would have on its ability to publish other the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials Items under an Open Licence.
  - 6.8. Any decision to Approve any such request from the Supplier under Paragraph 6.6 shall be at the Buyer's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

## **7. Patents**

- 7.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 2 – not used

### 10. Intellectual Property Rights – General Provisions

- 10.1. Each Party keeps ownership of its own Existing IPR.
- 10.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 10.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 10.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 10.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 12 and 13, the Supplier must, within ten (10) Working Days notify the Buyer:
  - 10.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 10.5.2. the Deliverables affected.
- 10.6. For the avoidance of doubt:
  - 10.6.1. except as provided for in Paragraphs 13.3.3.2(a) or 12.1.6.2 and 12.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 12 and 13;
  - 10.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 10.6.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 10.6.2.2. section 12 of the Registered Designs Act 1949; or
    - 10.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## **11. Ownership and delivery of IPR created under this Contract**

11.1. Any New IPR and Specially Written Software is owned by the Buyer, including:

11.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

11.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

11.2. The Supplier must deliver to the Buyer:

11.2.1. the Specially Written Software;

11.2.2. any software elements of the New IPR;

11.2.3. relevant Documentation; and

11.2.4. all related Software Supporting Materials,

within seven days of:

11.2.5. either:

11.2.5.1. initial release or deployment; or

11.2.5.2. if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

11.2.6. each subsequent release or deployment of the Specially Written Software and any software elements of the New IPR.

11.3. Where the Supplier delivers materials to the Buyer under Paragraph 11.2, it must do so in a format specified by the Buyer. Where the Buyer specifies the material is to be delivered on media, the Buyer becomes the owner of the media containing the material on delivery.

11.4. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.

## **12. Use of Supplier Existing IPRs and Third Party IPRs**

12.1. The Supplier must not:

- 12.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;
  - 12.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable for any of the purposes set out in Paragraph 13.4; or
  - 12.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,
- unless one or more of the following conditions apply:
- 12.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;
  - 12.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:
    - 12.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
    - 12.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;
  - 12.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 12.1.4 and one of the following conditions is met:
    - 12.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 13.3, as if:
      - (a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and
      - (b) the term “third party” were substituted for the term Supplier,
- in each place they occur; or
- 12.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 12.1.6.1, all the following conditions are met:

- (a) the Supplier has notified the Buyer in writing giving details of:
  - (1) what licence terms can be obtained from the relevant third party; and
  - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
- (b) the Buyer Approves the licence terms of one of those third parties; and
- (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

12.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within 5 Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

12.2.1. maintained or supported by the developer; or

12.2.2. made commercially available.

### **13. Licences in respect of Supplier Existing IPR that is not COTS Software**

13.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 12, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 13.3 in respect of each Deliverable where:

13.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

13.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 13.4; or

13.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

13.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 13.1 are mutually exclusive.

13.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

13.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

13.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

13.3.1.2. is sub-licensable solely for any of purposes in Paragraph 13.4;

13.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes in Paragraph 13.4; and

13.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

13.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for the purposes set out in Paragraphs 13.4;

13.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(d) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

13.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier);

13.3.2.4. where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or



- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

13.3.2.5. includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Deliverables; and

13.3.3. is subject to the restrictions that:

13.3.3.1. no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph; and

13.3.3.2. any transferee or sublicensee of the Supplier Existing IPR Licence must either:

- (a) enter into a direct arrangement with the Supplier in the form set out in Annex 2; or

- (b) enter into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

13.4. For the purposes of Paragraphs 13.1 and 13.3, the relevant purposes are:

13.4.1. to allow the Buyer or any End User to receive and use the Deliverables;

13.4.2. to allow the Buyer to commercially exploit (including by publication under Open Licence) the Specially Written Software, the New IPR and New IPR Items; and

13.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

## **14. Licences granted by the Buyer**

14.1. Subject to Paragraph 15 (in the case of New IPR and Specially Written Software), the Buyer grants the Supplier a licence to the New IPR, Specially Written Software and Buyer Existing IPR that:

14.1.1. is non-exclusive, royalty-free and non-transferable;

14.1.2. is sub-licensable to any Sub-contractor where

14.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

14.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph

14.1.3. in the case of Buyer Existing IPR:

14.1.3.1. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

- (a) fulfilling its obligations under this Contract; and
- (b) where terms are agreed by the Buyer and Supplier under Paragraph 15, commercially exploiting the New IPR and Specially Written Software; and

14.1.3.2. terminates at the later of:

- (a) the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later; or
- (b) the occurrence of any condition, or on the date, specified by the Buyer; and

14.1.4. in the case of New IPR and Specially Written Software is:

14.1.4.1. where terms are agreed by the Buyer and Supplier under Paragraph 15, on those terms; or

14.1.4.2. where terms are not agreed by the Buyer and Supplier under Paragraph 15, on the same terms as Buyer Existing IPR under Paragraph 14.1.3.

14.2. When the licence granted under Paragraph 14.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 14.1.2:

14.2.1. immediately cease all use of the Buyer Existing IPR, New IPR or Specially Written Software (including the Government Data within which the Buyer Existing IPR, New IPR or Specially Written Software may subsist);

14.2.2. either:

14.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR, Specially Written Software and the Government Data; or

14.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR, the Specially Written Software and the Government Data (as the case may be); and

14.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR, the Specially Written Software and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

## **15. Buyer approval for Supplier to exploit New IPR and Specially Written Software**

15.1. Before using, copying or adapting any Buyer Existing IPR, New IPR or Specially Written Software for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

15.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in that licence.

15.3. The Supplier must provide a detailed proposal setting out:

15.3.1. the purpose for which it proposes to use the Buyer Existing IPR, New IPR or Specially Written Software;

15.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR, New IPR or Specially Written Software;

15.3.3. its proposed business plan, including:

15.3.3.1. the goods or services to be offered by the Supplier that use or incorporate the Buyer Existing IPR, New IPR or Specially Written Software;

15.3.3.2. the relationship between the Buyer Existing IPR, New IPR or Specially Written Software and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods or services;

15.3.3.3. the target markets for those goods or services;

15.3.3.4. the estimated level of orders;

15.3.3.5. its marketing strategy;

15.3.3.6. details of the estimated costs, prices, revenues and profits;

- 15.3.3.7. the proposed financial benefit to the Buyer;
- 15.3.4. the impact of the proposal on the Services the Supplier provides under this Contract;
- 15.3.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the Buyer Existing IPR, New IPR or Specially Written Software were it to enter into an arm's length commercial relationship with a third-party;
- 15.3.6. any proposed changes to this Contract; and
- 15.3.7. any additional agreement the Supplier proposes that it and the Buyer enter into;
- 15.3.8. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 15.3.9. any other information required by the Buyer.
- 15.4. Where the proposed financial benefit to the Buyer under Paragraph 15.3.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 15.5. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
  - 15.5.1. provide for the licencing of the New IPR and Specially Written Software to the Buyer on the same terms as in this Contract; and
  - 15.5.2. include a price that reflects the Charges.
- 15.6. The Supplier acknowledges that:
  - 15.6.1. the Buyer may refuse or require changes to the Supplier's proposal in its sole discretion and for any reason; and
  - 15.6.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
    - 15.6.2.1. public procurement; and
    - 15.6.2.2. subsidy control.
- 15.7. Where the Buyer agrees to the Supplier's proposal, with or without changes, the Supplier may not use, copy or adapt any Buyer Existing IPR other than for the purpose of fulfilling its obligations under this Contract:

15.7.1. any additional agreement to give effect to the proposal;

15.7.2. any consequential Variation to this Contract.

## **16. Provision of information on New IPR and Specially Written Software**

16.1. The Buyer may, at any time, require the Supplier to provide information on:

16.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and

16.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.

16.2. The Supplier must provide the information required by the Buyer:

16.2.1. Within twenty (20) Working Days of the date of the requirement; and

16.2.2. in the form and with the content specified by the Buyer.

## **17. Patents**

17.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 3 – not used

### **20. Intellectual Property Rights – General Provisions**

- 20.1. Each Party keeps ownership of its own Existing IPR.
- 20.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 20.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 20.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 20.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 23 and 24, the Supplier must, within 10 Working Days notify the Buyer:
  - 20.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 20.5.2. the Deliverables affected.
- 20.6. For the avoidance of doubt:
  - 20.6.1. except as provided for in Paragraphs 24.3.2.2(c)(1) or 23.1.6.2 and 23.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 23 and 24;
  - 20.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 20.6.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 20.6.2.2. section 12 of the Registered Designs Act 1949; or
    - 20.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

## **21. Ownership and delivery of IPR created under this Contract**

21.1. Any New IPR and Specially Written Software is owned by the Supplier, including:

21.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

21.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

21.2. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout this Contract Period.

## **22. Licence of New IPR and Specially Written Software**

22.1. The Supplier grants the Buyer a New IPR and Specially Written Software Licence on the terms set out in Paragraph 22.3 in respect of each Deliverable where:

22.1.1. the New IPR or Specially Written Software is embedded in the Deliverable;

22.1.2. the New IPR or Specially Written Software is necessary for the Buyer to use the Deliverable; or

22.1.3. the New IPR or Specially Written Software is used to provide the Deliverable.

22.2. The categories of New IPR or Specially Written Software set out in Paragraph 22.1 are mutually exclusive.

22.3. The New IPR and Specially Written Software Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

22.3.1. in the case of New IPR or Specially Written Software embedded in a Deliverable or is used to provide the Deliverable:

22.3.1.1. is sub-licensable;

22.3.1.2. has no restriction on the identity of any transferee or sub-licensee;

- 22.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the New IPR or Specially Written Software for any of the purposes set out in Paragraph 22.4;
- 22.3.2. in the case of New IPR or Specially Written Software that is necessary for the Buyer to receive or use the Deliverable:
  - 22.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR or Specially Written Software for any of the purposes set out in Paragraph 22.4;
  - 22.3.2.2. is transferrable to only:
    - (a) a Crown Body;
    - (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
    - (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
      - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
      - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);
  - 22.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:
    - (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - 22.3.2.4. enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);
- 22.3.3. continues in effect following the expiry or earlier termination of this Contract; and
- 22.3.4. is subject to the restrictions that:
  - 22.3.4.1. each transferee or sub-licensee either:
    - (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or



(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

22.3.4.2. no sub-licence granted to the New IPR or Specially Written Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

22.4. For the purposes of Paragraphs 22.1 and 22.3, the relevant purpose is:

22.4.1. to allow the Buyer or any End User to receive and use the Deliverables.

22.5. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

22.5.1. the New IPR and Specially Written Software Licence is unaffected; and

22.5.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the New IPR and Specially Written Software Licence.

## **23. Use of Supplier Existing IPRs and Third Party IPRs**

23.1. The Supplier must not:

23.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

23.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable its intended purpose; or

23.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

23.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

23.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

23.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard

commercial terms on which such software is usually made commercially available); and

23.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;

23.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 23.1.4 and one of the following conditions is met:

23.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 22.3, as if:

(a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and

(b) the term “third party” were substituted for the term Supplier,

in each place they occur; or

23.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 23.1.6.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer Approves the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

23.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

23.2.1. maintained or supported by the developer; or

23.2.2. made commercially available.

## **24. Licences in respect of Supplier Existing IPR that is not COTS Software**

24.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 23, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 24.3 in respect of each Deliverable where:

24.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

24.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 24.4; or

24.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

24.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 24.1 are mutually exclusive.

24.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

24.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

24.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

24.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 24.4;

24.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 24.4; and

24.3.1.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

24.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

24.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 24.4;

24.3.2.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

24.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

24.3.2.4. is subject to the restrictions that:

- (a) no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sublicensee with any wider rights than those granted to the Buyer under this Paragraph; and
- (b) any sublicensee or transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

24.3.2.5. expires at the later of:

- (a) the end of this Contract Period; or
- (b) the end of any Termination Assistance Period.

24.4. For the purposes of Paragraphs 24.1 and 24.3, the relevant purposes are to allow the Buyer or any End User to receive and use the Deliverables.

## **25. Licences to COTS software**

25.1. The Supplier must provide the Authority with licences to Supplier Existing IRP and Third Party IPR that is, in each case, COTS software at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

## **26. Licences granted by the Buyer**

26.1. Subject to Paragraph 27, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

26.1.1. is non-exclusive, royalty-free and non-transferable;

26.1.2. is sub-licensable to any Sub-contractor where

26.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

26.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph

26.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

26.1.3.1. fulfilling its obligations under this Contract; and

26.1.3.2. commercially exploiting the New IPR and Specially Written Software; and

26.1.4. unless otherwise agreed in accordance with Paragraph 27, terminates at the earlier of the End Date or date of termination of this Contract.

## **27. Buyer approval for Supplier to exploit Buyer Existing IPR**

27.1. Before using Buyer existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

27.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

27.3. The Supplier must provide a proposal setting out:

27.3.1. the purpose for which it proposes to use the New IPR or Specially Written Software;

27.3.2. the activities the Supplier proposes to undertake with or in respect of the New IPR or Specially Written Software;

27.3.3. such further information as the Buyer may reasonably require to properly consider the proposal.

27.4. The Buyer may only refuse the Buyer's proposal where it considers that if the Supplier were to implement the proposal it would harm:

27.4.1. the Buyer's reputation; or

27.4.2. the Buyer's interests.

27.5. Where the Buyer has not:

27.5.1. approved or declined the proposal; or

27.5.2. required further information,

within 20 Working Days of the later of:

27.5.3. the date the proposal was first provided to the Buyer; or

27.5.4. the date on which further information was provided to the Buyer,  
then the proposal is, for the purposes of this Contract, approved.

## **28. Provision of information on New IPR and Specially Written Software**

28.1. The Buyer may, at any time, require the Supplier to provide information on:

28.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and

28.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.

28.2. The Supplier must provide the information required by the Buyer:

28.2.1. within 20 Working Days of the date of the requirement; and

28.2.2. in the form and with the content specified by the Buyer.

## **29. Patents**

- 29.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 4 – not used

### 30. Intellectual Property Rights – General Provisions

- 30.1. Each Party keeps ownership of its own Existing IPR.
- 30.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 30.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 30.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 30.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 33 and 34, the Supplier must, within 10 Working Days notify the Buyer:
  - 30.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 30.5.2. the Deliverables affected.
- 30.6. For the avoidance of doubt:
  - 30.6.1. except as provided for in Paragraphs 34.3.2.2(c)(1) or 33.1.6.2 and 33.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 33 and 34;
  - 30.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - 30.6.2.1. Sections 55 and 56 of the Patents Act 1977;
    - 30.6.2.2. section 12 of the Registered Designs Act 1949; or
    - 30.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.



### **31. Ownership and delivery of IPR created under this Contract**

31.1. Any New IPR and Specially Written Software is owned by the Supplier, including:

31.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

31.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

31.2. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.

### **32. Licence of New IPR and Specially Written Software**

32.1. the Supplier grants the Buyer a New IPR and Specially Written Software Licence on the terms set out in Paragraph 32.3 in respect of each Deliverable where:

32.1.1. the New IPR or Specially Written Software is embedded in the Deliverable;

32.1.2. the New IPR or Specially Written Software is necessary for the Buyer to use the Deliverable; or

32.1.3. the New IPR or Specially Written Software is used to provide the Deliverable.

32.2. The categories of New IPR or Specially Written Software set out in Paragraph 32.1 are mutually exclusive.

32.3. The New IPR and Specially Written Software Licence granted by the Supplier to the Buyer is a , non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

32.3.1. in the case of New IPR or Specially Written Software embedded in a Deliverable or is used to provide the Deliverable:

32.3.1.1. is sub-licensable;

32.3.1.2. has no restriction on the identity of any transferee or sub-licensee;

- 32.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the New IPR or Specially Written Software for any of the purposes set out in Paragraph 32.4;
- 32.3.2. in the case of New IPR or Specially Written Software that is necessary for the Buyer to receive or use the Deliverable:
  - 32.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR or Specially Written Software for any of the purposes set out in Paragraph 32.4;
  - 32.3.2.2. is transferrable to only:
    - (a) a Crown Body;
    - (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
    - (c) a person or organisation that is not a direct competitor of the Supplier; and
  - 32.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:
    - (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
    - (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);
- 32.3.3. continues in effect following the expiry or earlier termination of this Contract; and
- 32.3.4. is subject to the restrictions that:
  - 32.3.4.1. each transferee or sub-licensee either:
    - (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
    - (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and
  - 32.3.4.2. no sub-licence granted to the New IPR or Specially Written Software shall purport to provide the sub-licensee with any

wider rights than those granted to the Buyer under this Paragraph.

32.4. For the purposes of Paragraphs 32.1 and 32.3, the relevant purposes are:

32.4.1. to allow the Buyer or any End User to receive and use the Deliverables; and

32.4.2. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

32.5. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

32.5.1. the New IPR and Specially Written Software Licence is unaffected; and

any successor body of the Buyer that is a Crown Body shall have the benefit of the New IPR and Specially Written Software Licence.

### **33. Use of Supplier Existing IPRs and Third Party IPRs**

33.1. The Supplier must not:

33.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

33.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable its intended purpose; or

33.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

33.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

33.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

33.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and

33.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Buyer;

33.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 33.1.4 and one of the following conditions is met:

33.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 32.3, as if:

- (a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and
- (b) the term “third party” were substituted for the term Supplier,

in each place they occur; or

33.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 33.1.6.1, all the following conditions are met:

- (a) the Supplier has notified the Buyer in writing giving details of:
  - (1) what licence terms can be obtained from the relevant third party; and
  - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
- (b) the Buyer Approves the licence terms of one of those third parties; and
- (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

33.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

33.2.1. maintained or supported by the developer; or

33.2.2. made commercially available.

### **34. Licences in respect of Supplier Existing IPR that is not COTS Software**

34.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 33, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 32.3 in respect of each Deliverable where:

34.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

34.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 34.4; or

34.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

34.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 34.1 are mutually exclusive.

34.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

34.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

34.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

34.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 34.4;

34.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 34.4; and

34.3.1.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

34.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

34.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer

the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 34.4;

34.3.2.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

34.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

34.3.2.4. is subject to the restrictions that:

- (a) no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph; and
- (b) any sublicensee or transferee either:
  - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

34.3.2.5. expires at the later of:

- (a) the end of the Contract Period; or
- (b) the end of any Termination Assistance Period.

34.4. For the purposes of Paragraphs 34.1 and 34.3, the relevant purposes are:

- 34.4.1. to allow the Buyer or any End User to receive and use the Deliverables;
- 34.4.2. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### **35. Licences to COTS software**

35.1. The Supplier must provide the Authority with licences to Supplier Existing IRP and Third Party IPR that is, in each case, COTS software at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

### **36. Licences granted by the Buyer**

36.1. Subject to Paragraph 37, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

- 36.1.1. is non-exclusive, royalty-free and non-transferable;
- 36.1.2. is sub-licensable to any Sub-contractor where
  - 36.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and
  - 36.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph
- 36.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:
  - 36.1.3.1. fulfilling its obligations under this Contract; and
  - 36.1.3.2. commercially exploiting the New IPR and Specially Written Software; and
- 36.1.4. unless otherwise agreed in accordance with Paragraph 37, terminates at the earlier of the End Date or date of termination of this Contract.

### **37. Buyer approval for Supplier to exploit Buyer Existing IPR**

- 37.1. Before using Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.
- 37.2. The Supplier must provide a proposal setting out:
  - 37.2.1. the purpose for which it proposes to use the New IPR or Specially Written Software;
  - 37.2.2. the activities the Supplier proposes to undertake with or in respect of the New IPR or Specially Written Software;
  - 37.2.3. such further information as the Buyer may reasonably require to properly consider the proposal.
- 37.3. The Buyer may only refuse the Buyer's proposal where it considers that if the Supplier were to implement the proposal it would harm:
  - 37.3.1. the Buyer's reputation; or
  - 37.3.2. the Buyer's interests.
- 37.4. Where the Buyer has not:
  - 37.4.1. approved or declined the proposal; or
  - 37.4.2. required further information,
    - within twenty (20) Working Days of the later of:
  - 37.4.3. the date the proposal was first provided to the Buyer; or
  - 37.4.4. the date on which further information was provided to the Buyer,
    - then the proposal is, for the purposes of this Contract, approved.

### **38. Provision of information on New IPR and Specially Written Software**

- 38.1. The Buyer may, at any time, require the Supplier to provide information on:
  - 38.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and
  - 38.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.
- 38.2. The Supplier must provide the information required by the Buyer:
  - 38.2.1. within twenty (20) Working Days of the date of the requirement; and



38.2.2. in the form and with the content specified by the Buyer.

### **39. Patents**

39.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## Option 5 – not used

### 40. Royalties

40.1. The Supplier must provide a detailed proposal setting out:

40.1.1. the purpose for which it proposes to use the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.2. the activities the Supplier proposes to undertake with or in respect of the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.3. its proposed business plan, including:

40.1.3.1. the goods, services or software to be offered by the Supplier that use or incorporate the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.3.2. the relationship between the New IPR, the Specially Written Software and the Buyer Existing IPR, and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods, services or software;

40.1.3.3. the target markets for those goods, services or software;

40.1.3.4. the estimated level of orders;

40.1.3.5. its marketing strategy;

40.1.3.6. details of the estimated costs, prices, revenues and profits;

40.1.3.7. the proposed financial benefit to the Buyer;

40.1.4. the impact of the proposal on the Services the Supplier provides under this Contract;

40.1.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the New IPR or the Specially Written Software were it to enter into an arm's length commercial relationship with a third-party;

40.1.6. the terms on which the Supplier proposes to licence the Buyer Existing IPR from the Buyer;

40.1.7. any proposed Variations to this Contract; and

40.1.8. any additional agreement the Supplier proposes that it and the Buyer enter into;

- 40.1.9. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 40.1.10. any other information required by the Buyer.
- 40.2. Where the proposed financial benefit to the Buyer under Paragraph 40.1.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 40.3. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
  - 40.3.1. provide for the licencing of the New IPR or Specially Written Software to the Buyer on the same terms as in this Contract; and
  - 40.3.2. include a price that reflects the Charges.
- 40.4. The Supplier acknowledges that:
  - 40.4.1. the Buyer may refuse, or require changes to, the Supplier's proposal in its sole discretion and for any reason; and
  - 40.4.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
    - 40.4.2.1. public procurement; and
    - 40.4.2.2. subsidy control.
- 40.5. Where the Buyer agrees to the Supplier's proposal, with or without changes, that proposal will not have effect until both Parties have executed:
  - 40.5.1. any additional agreement to give effect to the proposal;
  - 40.5.2. any consequential Variation to this Contract.
- 40.6. Any agreement between the Buyer and the Supplier entered into under Paragraph [ ] must include provisions to the following effect:
  - 40.6.1. the calculation of royalties is based on the following formula:
$$R = NSV \times RR \times P$$

where:

R is the royalty payable on an individual item subject to the agreement;

NSV is the net sales value of the item, that is the price for which the Supplier sold the item to a third party after the deduction of normal trade discounts and excluding VAT or any other tax or duty based directly on the price of the item and payable by the purchaser;

RR is **[insert** the royalty payable on the item, expressed as a percentage]; and

P is the proportion that the New IPR or Specially Written Software bears to the whole of the item, expressed as a percentage, subject to the following:

40.6.1.1. the proportion that the New IPR or Specially Written Software bears to the item as a whole is an estimation of the effort required to develop the New IPR or Specially Written Software compared to the item as a whole;

40.6.1.2. P is 100% where, either:

(a) where the proportion of the New IPR or Specially Written Software to the item as a whole is 80% or greater; or

(b) it would not be practicable to create or produce the item without the New IPR or Specially Written Software.

40.6.2. all royalties are paid quarterly on the basis of the total sales of the item in that quarter;

40.6.3. each payment of royalties must be accompanied by a detailed statement showing:

40.6.3.1. the number of items sold in that quarter;

40.6.3.2. their net sales value; and

40.6.3.3. the royalties due to the Buyer;

40.6.4. the Supplier must keep true and accurate records and books of account containing all information and data necessary for the calculation of royalties, including, for the avoidance of doubt, the calculation of the net sales value and the estimation of P in the formula in Paragraph 40.1 40.6.1;

40.6.5. the Supplier must make such books and records available for inspection by the Buyer, or the Buyer's representative, whether physically or virtually at any reasonable time specified by the Buyer.

## **41. Clawback**

41.1. If, within three years of its creation, the Supplier:

41.1.1. is not commercially exploiting any New IPR or Specially Written Software;

41.1.2. where the Supplier is not commercially exploiting any New IPR or Specially Written Software, is not, to the satisfaction of the Buyer, using its best endeavours to do so,

then, on written request from the Buyer:

41.1.2.1. the Supplier must promptly assign to the Buyer the New IPR, Specially Written Software or any specified New IPR Items or part of the New IPR or Specially Written Software; and

41.1.2.2. the licence to Buyer Existing IPR granted under Paragraph 26.1.3.2 terminates either:

(a) on the date specified in the notice; or

(b) where no date is specified in the notice, on the date the notice is received by the Supplier.

41.2. Each Party shall bear its own costs of preparing and executing any such assignment.

**ANNEX 1: NEW IPR AND SPECIALLY WRITTEN SOFTWARE**

Name of New IPR	Details

Name of Specially Written Software	Details

## ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

### CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** is made on [date] 20

**BETWEEN:**

- (1) [insert name] of [insert address] (the “**Sub-licensee**”); and
- (2) [insert name] of [insert address] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

**WHEREAS:**

- (A) [insert name of Buyer] (the “**Buyer**”) and the Supplier are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the “**Sub-licence**”).
- (C) It is a requirement of this Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Buyer.

**IT IS AGREED as follows:**

**1 Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

**“Confidential Information”**

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence

together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

- (c) other Information provided by the Buyer pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above,

but not including any Information that:

- (a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (c) was independently developed without access to the Information;

**“Information”**

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

**“Sub-licence”**

has the meaning given to that expression in recital (B) to this Agreement.



1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

**2 Confidentiality Obligations**

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:
  - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-

readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(c) make no further use of any Confidential Information.

### **3 Permitted Disclosures**

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

### **4 General**

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [            ]

## **6 Governing law**

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of** [name of Supplier]

Signature:

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Date:

Name:

Position:

**For and on behalf of** [name of Sub-licensee]

Signature:

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Date:

Name:

Position: