

# DPS Schedule 6 (Order Form Template and Order Schedules)

## Order Form

ORDER REFERENCE: **SR2610949264**

THE BUYER: **HM Revenue & Customs**

BUYER ADDRESS 100 Parliament Street,  
Westminster, London, SW1A 2BQ

THE SUPPLIER: IFF RESEARCH LTD

SUPPLIER ADDRESS: 65 Southwark Street, London, England, SE1 0HR

REGISTRATION NUMBER: 00849983

DUNS NUMBER: 211574041

DPS SUPPLIER REGISTRATION SERVICE ID: SQ-BK6S9Z6

### APPLICABLE DPS CONTRACT

This Order Form is for the provision of the Deliverables and dated 09/02/2026.

It's issued under the DPS Contract with the reference number **RM6126** under the provision of **SR2610949264 – Alcohol Duty Reform** to generate insight which provides an understanding of customers experiences of the alcohol duty reforms .

### DPS FILTER CATEGORY(IES):

**Taxation - business, Thematic analysis, Qualitative, Depth interviews, Impact evaluation, Theory-based impact evaluation (incl. Theories of Change (ToC) and Logic Modelling), Customer List, Micro businesses, Small businesses, Medium businesses, Large businesses, Ordinary partnerships, Companies, Tax-payers, England, Wales, Scotland, Northern Ireland**

ORDER INCORPORATED TERMS

The following documents are incorporated into this Order Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Order Special Terms and Order Special Schedules.
2. Joint Schedule 1(Definitions and Interpretation) **RM6126**
3. DPS Special Terms
4. The following Schedules in equal order of precedence:
  - Joint Schedules for **RM6126**
  - Joint Schedule 2 (Variation Form)
  - Joint Schedule 3 (Insurance Requirements)
  - Joint Schedule 4 (Commercially Sensitive Information)
  - Joint Schedule 6 (Key Subcontractors)
  - Joint Schedule 7 (Financial Difficulties)
  - Joint Schedule 8 (Guarantee)
  - Joint Schedule 10 (Rectification Plan)
  - Joint Schedule 11 (Processing Data)
  - Joint Schedule 12 (Supply Chain Visibility)
  - Order Schedules for **SR2610949264**
  - Order Schedule 1 (Transparency Reports)
  - Order Schedule 2 (Staff Transfer)
  - Order Schedule 3 (Continuous Improvement)
  - Order Schedule 4 (Order Tender).
  - Order Schedule 5 (Pricing Details)
  - Order Schedule 7 (Key Supplier Staff)
  - Order Schedule 8 (Business Continuity and Disaster Recovery)
  - Order Schedule 9 (Consultancy Security)
  - Order Schedule 10 (Exit Management)
  - Order Schedule 12 (Clustering) - Not Used
  - Order Schedule 14 (Service Levels) - Not used
  - Order Schedule 15 (Order Contract Management) - Not used
  - Order Schedule 16 (Benchmarking) - Not used
  - Order Schedule 17 (MOD Terms) - Not used
  - Order Schedule 18 (Background Checks)
  - Order Schedule 19 (Scottish Law) - Not used
  - Order Schedule 20 (Order Specification)
  - Order Schedule 21 (Northern Ireland Law) - Not used
  - Order Schedule 23 (HMRC Terms)
5. CCS Core Terms (DPS version) v1.0.3
6. Joint Schedule 5 (Corporate Social Responsibility) **RM6126**
7. Order Schedule 4 (Order Tender) as long as any parts of the Order Tender that offer a better commercial position for the Buyer (as decided by the Buyer) take precedence over the documents above.

No other Supplier terms are part of the Order Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

#### ORDER SPECIAL TERMS

The following Special Terms are incorporated into this Order Contract:

##### Special Term 1:

Additional Vetting requirements are included in the addendum to Order Schedule 9 (Consultancy Security), which the Supplier must follow.

ORDER START DATE: 16/02/2026

ORDER EXPIRY DATE: 16/08/2026

ORDER INITIAL PERIOD: 6 Months + Optional 6 Months Extension

#### DELIVERABLES

See details in Order Schedule 20 (Order Specification)

#### MAXIMUM LIABILITY

The limitation of liability for this Order Contract is stated in Clause 11.2 of the Core Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is

██████████

#### ORDER CHARGES

The total contract value is ██████████

See details in Order Schedule 5 (Pricing Details)

The Charges will not be impacted by any change to the DPS Pricing. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of:

- Indexation
- Specific Change in Law
- Benchmarking using Order Schedule 16 (Benchmarking)

#### REIMBURSABLE EXPENSES

None

#### PAYMENT METHOD

SAP Ariba Invoicing

**BUYER'S INVOICE ADDRESS:**

The Accounts Payable Team  
Payments.team@hmrc.gov.uk

**BUYER'S AUTHORISED REPRESENTATIVE**

Name : [REDACTED]  
Role : Principal Research Officer  
Email address : [REDACTED]  
Address : 100 Parliament Street,  
LONDON,  
SW1A 2BQ

**BUYER'S ENVIRONMENTAL POLICY**

Not applicable

**BUYER'S SECURITY POLICY**

Appended at Schedule 9 (Consultancy Security)– Part B -Annex 2 - Security Management Plan.

**SUPPLIER'S AUTHORISED REPRESENTATIVE**

[REDACTED]  
[REDACTED]  
5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

**SUPPLIER'S CONTRACT MANAGER**

[REDACTED]  
[REDACTED]  
5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

**PROGRESS REPORT FREQUENCY**

Weekly

**PROGRESS MEETING FREQUENCY**

Weekly, on a day agreed with the supplier after the project set up meeting.

**KEY STAFF**

[REDACTED] (Authorised Representative and Contract Manager)  
5th Floor, The Harlequin Building  
65 Southwark Street  
London

SE1 0HR

[REDACTED] (Director)

5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

[REDACTED] (Senior Research Manager)

5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

[REDACTED] (Senior Research Executive)

5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

[REDACTED] (Research Executive)

5th Floor, The Harlequin Building  
65 Southwark Street  
London  
SE1 0HR

#### KEY SUBCONTRACTOR(S)

[REDACTED]

[REDACTED]

[REDACTED]

#### E-AUCTIONS

Not applicable

#### COMMERCIALLY SENSITIVE INFORMATION

05/02/2026 – IFF Written submission – Questions 3.1 to 3.5 – Duration Indefinitely

05/02/2026 – IFF Day rates in the pricing schedule – Duration Indefinitely

#### SERVICE CREDITS

Not applicable

**ADDITIONAL INSURANCES**

Not applicable

**GUARANTEE**

To be determined by successful Supplier.

**SOCIAL VALUE COMMITMENT**

The Supplier agrees, in providing the Deliverables and performing its obligations under the Order Contract, that it will comply with the social value commitments in Order Schedule 4 (Order Tender)

<b>For and on behalf of the Supplier:</b>		<b>For and on behalf of the Buyer:</b>	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

## Joint Schedule 1 (Definitions)

1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint 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 each Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa; 1.3.2 reference to a gender includes the other gender and the neuter; 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;

1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;

1.3.10 references to a series of Clauses or Paragraphs shall be inclusive

of the clause numbers specified;

1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract; and 1.3.12 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole.

1.4 In each 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 Insurances"</b>	insurance requirements relating to an Order Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
<b>"Admin Fee"</b>	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-amsupplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-amsupplier/management-information/admin-fees</a> ;
<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>"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;

<p><b>"Audit"</b></p>	<p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under an Order Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> </ul>
	<ul style="list-style-type: none"> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources;</li> <li>k) verify the accuracy and completeness of any Management Information delivered or required by the DPS Contract;</li> </ul>

<b>"Auditor"</b>	<p>a) the Buyer's internal and external auditors;</p> <p>b) the Buyer's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
<b>"Authority"</b>	CCS and each Buyer;
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the relevant 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 the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Order Contract initially identified in the Order Form;
<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>"CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the DPS Contract initially identified in the DPS Appointment Form and subsequently on the Platform;
<b>"Central Government Body"</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<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 the Order Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Order 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 the DPS Appointment Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority,

	would cause the Supplier significant commercial disadvantage or material financial loss;
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<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<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 CCS, 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 CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;
<b>"Contract"</b>	either the DPS Contract or the Order Contract, as the context requires;
<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities;
<b>"Contract Period"</b>	the term of either a DPS Contract or Order Contract from the earlier of the: <ul style="list-style-type: none"> <li>a) applicable Start Date; or</li> <li>b) the Effective Date until the applicable End Date;</li> </ul>
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start 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 GDPR;

<b>"Core Terms"</b>	CCS' standard terms and conditions for common goods and services which govern how Supplier must interact with CCS and Buyers under DPS Contracts and Order Contracts;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:  a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Man Day, of engaging the Supplier Staff, including:

	<p>i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances;</p> <p>v) any other contractual employment benefits;</p> <p>vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</p> <p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables;</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any</p> <p>Deliverables; but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Order Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>f) amounts payable under Order Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
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<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments
	and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<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 GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
<b>"Data Protection Officer"</b>	has the meaning given to it in the GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the GDPR;
<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 an Order Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a 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 a Contract and in respect of which the Supplier is liable to the Relevant Authority;
<b>"Default Management Levy"</b>	has the meaning given to it in Paragraph 8.1.1 of DPS Schedule 5 (Management Levy and Information);

<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 Mobilisation Plan;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of an Order Contract as confirmed and accepted by the Buyer by either (a) confirmation in writing to the Supplier; or (b) where Order Schedule 13 (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>"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) for the period specified in the Order Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (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 a Contract as:</p> <p>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables;</p> <p>b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>"DOTAS"</b>	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;</p>
<b>"DPA 2018"</b>	<p>a) the Data Protection Act 2018;</p>
<b>"DPS"</b>	<p>the dynamic purchasing system operated by CCS in accordance with Regulation 34 that this DPS Contract governs access to;</p>
<b>"DPS Application"</b>	<p>the application submitted by the Supplier to CCS and annexed to or referred to in DPS Schedule 2 (DPS Application);</p>
<b>"DPS Appointment Form"</b>	<p>the document outlining the DPS Incorporated Terms and crucial information required for the DPS Contract, to be executed by the Supplier and CCS and subsequently held on the Platform;</p>
<b>"DPS Contract"</b>	<p>the dynamic purchasing system access agreement established between CCS and the Supplier in accordance with Regulation 34 by the DPS Appointment Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the OJEU Notice;</p>
<b>"DPS Contract Period"</b>	<p>the period from the DPS Start Date until the End Date or earlier termination of the DPS Contract;</p>
<b>"DPS Expiry Date"</b>	<p>the date of the end of the DPS Contract as stated in the DPS Appointment Form;</p>

<b>"DPS Incorporated Terms"</b>	the contractual terms applicable to the DPS Contract specified in the DPS Appointment Form;
<b>"DPS Initial Period"</b>	the initial term of the DPS Contract as specified in the DPS Appointment Form;
<b>"DPS Optional Extension Period"</b>	such period or periods beyond which the DPS Initial Period may be extended up to a maximum of the number of years in total specified in the DPS Appointment Form;
<b>"DPS Pricing"</b>	the maximum price(s) applicable to the provision of the Deliverables set out in DPS Schedule 3 (DPS Pricing);
<b>"DPS Registration"</b>	the registration process a Supplier undertakes when submitting its details onto the Platform;
<b>"DPS SQ Submission"</b>	the Supplier's selection questionnaire response;
<b>"DPS Special Terms"</b>	any additional terms and conditions specified in the DPS Appointment Form incorporated into the DPS Contract;
<b>"DPS Start Date"</b>	the date of start of the DPS Contract as stated in the DPS Appointment Form;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the 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 or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	the earlier of:  a) the Expiry Date (as extended by any Extension Period exercised by the Authority under Clause 10.2); or  if a Contract is terminated before the date specified in (a) above, the

	date of termination of the Contract;
<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>"Estimated Year 1 Contract Charges"</b>	the anticipated total charges payable by the Supplier in the first Contract Year specified in the Order Form; a)
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under clause 11.2 :  i) in the first Contract Year, the Estimated Year 1 Contract Charges; or ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or  iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
<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>"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 the Contract (whether prior to the Start Date or otherwise);
<b>"Expiry Date"</b>	the DPS Expiry Date or the Order Expiry Date (as the context dictates);
<b>"Extension Period"</b>	the DPS Optional Extension Period or the Order Optional Extension Period as the context dictates;

<b>"Filter Categories"</b>	the number of categories specified in DPS Schedule 1  (Specification), if applicable;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority 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 any failure of delay caused by a lack of funds;
<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>"GDPR"</b>	i) the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"General Anti-Abuse Rule"</b>	b) the legislation in Part 5 of the Finance Act 2013; and  any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;

<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>	a) goods made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	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 Authority's Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Authority; or

	the Supplier is required to generate, process, store or transmit pursuant to a Contract;
<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/governmentprocurement-card--2">https://www.gov.uk/government/publications/governmentprocurement-card--2</a> ;
<b>"Guarantor"</b>	i) the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (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>	Her Majesty's Revenue and Customs;

<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Order Start 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 Relevant Authority 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 the 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 DPS Pricing/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> <p>such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</p>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Order Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Indemnifier"</b>	a) a Party from whom an indemnity is sought under this Contract;
<b>"Independent Control"</b>	<p>where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and</p> <p><b>"Independent Controller"</b> shall be construed accordingly;</p>
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with DPS Schedule 3 (DPS Pricing) and the relevant Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;

<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 a Contract specified on the Platform or the Order Form, as the context requires;
<b>"Insolvency Event"</b>	<p>a) in respect of a person:</p> <p>b) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or c) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>f) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>h) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Order Contract Period to install the Goods in accordance with the Order Contract;

<b>"Intellectual Property Rights" or "IPR"</b>	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;  b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and  c) all other rights having equivalent or similar effect in any country or jurisdiction;
<b>"Invoicing Address"</b>	the address to which the Supplier shall Invoice the Buyer as specified in the Order Form;
<b>"IPR Claim"</b>	a) any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a 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 Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Personnel"</b>	the individuals (if any) identified as such in the Order Form;
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;

<p><b>"Key Subcontractor"</b></p>	<p>any Subcontractor:</p> <p>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</p> <p>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Order Contract, and the Supplier shall list all such Key Subcontractors on the Platform and in the Key Subcontractor Section in the Order Form;</p>
<p><b>"Know-How"</b></p>	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;</p>

<p><b>"Law"</b></p>	<p>any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;</p>
<p><b>"LED"</b></p>	<p>Law Enforcement Directive (Directive (EU) 2016/680);</p>
<p><b>"Losses"</b></p>	<p>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;</p>
<p><b>"Man Day"</b></p>	<p>7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;</p>
<p><b>"Man Hours"</b></p>	<p>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;</p>
<p><b>"Management Information"</b></p>	<p>the management information specified in DPS Schedule 5 (Management Levy and Information);</p>

<b>"Management Levy"</b>	the sum specified on the Platform payable by the Supplier to CCS in accordance with DPS Schedule 5 (Management Levy and Information);
<b>"Marketing Contact"</b>	shall be the person identified in the DPS Appointment Form;
<b>"MI Default"</b>	means when two (2) MI Reports are not provided in any rolling six (6) month period;
<b>"MI Failure"</b>	means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> </ul> is not submitted by the reporting date (including where a declaration of no business should have been filed);
<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with DPS Schedule 5 (Management Levy and Information);
<b>"MI Reporting Template"</b>	a) means the form of report set out in the Annex to DPS Schedule 5 (Management Levy and Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Milestone"</b>	an event or task described in the Mobilisation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Mobilisation 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 National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

<p><b>"New IPR"</b></p>	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;</p>
<p><b>"Occasion of Tax Non – Compliance"</b></p>	<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 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</p> <p>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;</p>
<p><b>"Open Book Data"</b></p>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Order Contract, including details and all assumptions relating to:</p> <p>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;</p> <p>b) operating expenditure relating to the provision of the Deliverables including an analysis showing:</p> <p>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</p> <p>ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency)</p>

	<p>together with a list of agreed rates against each manpower grade;</p> <p>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</p> <p>iv) Reimbursable Expenses, if allowed under the Order Form; c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</p> <p>e) the Supplier Profit achieved over the DPS Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>the actual Costs profile for each Service Period;</p>
<b>"Order"</b>	a) means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
<b>"Order Contract"</b>	b) the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the DPS Contract), which consists of the terms set out and referred to in the Order Form;
<b>"Order Contract Period"</b>	the Contract Period in respect of the Order Contract;
<b>"Order Expiry Date"</b>	the date of the end of an Order Contract as stated in the Order Form;
<b>"Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create an Order Contract;
<b>"Order Form Template"</b>	the template in DPS Schedule 6 (Order Form Template and Order Schedules);
<b>"Order Incorporated Terms"</b>	the contractual terms applicable to the Order Contract specified under the relevant heading in the Order Form;

<b>"Order Initial Period"</b>	the Initial Period of an Order Contract specified in the Order Form;
<b>"Order Optional Extension Period"</b>	such period or periods beyond which the Order Initial Period may be extended up to a maximum of the number of years in total specified in the Order Form;
<b>"Order Procedure"</b>	the process for awarding an Order Contract pursuant to Clause 2 (How the contract works) and DPS Schedule 7 (Order Procedure);

<b>"Order Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Order Contract;
<b>"Order Start Date"</b>	the date of start of an Order Contract as stated in the Order Form;
<b>"Order Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following an Order Procedure and set out at Order Schedule 4 (Order Tender);
<b>"Other Contracting Authority"</b>	any actual or potential Buyer under the DPS Contract;
<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>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	in the context of the DPS Contract, CCS or the Supplier, and in the in the context of an Order Contract the Buyer or the Supplier.  <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Performance Indicators" or "PIs"</b>	the performance measurements and targets in respect of the Supplier's performance of the DPS Contract set out in DPS Schedule 4 (DPS Management);

<b>"Personal Data"</b>	has the meaning given to it in the GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the GDPR;
<b>"Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;
<b>"Platform"</b>	the online application operated on behalf of CCS to facilitate the technical operation of the DPS;
<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 GDPR;
<b>"Processor"</b>	has the meaning given to it in the GDPR;

<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 a Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;

<p><b>“Prohibited Acts”</b></p>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>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 each Contract; or</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or 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;</li> </ul>
<p><b>“Protective Measures”</b></p>	<p>appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in DPS Schedule 9 (Cyber Essentials), if applicable, in the case of the DPS Contract or Order</p> <p>Schedule 9 (Security), if applicable, in the case of an Order Contract;</p>
<p><b>“Recall”</b></p>	<p>a) 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 right IPR rights) that might endanger health or hinder performance;</p>
<p><b>“Recipient Party”</b></p>	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>

<p><b>"Rectification Plan"</b></p>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Joint Schedule 10 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> </ul> <p>the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</p>
<p><b>"Rectification Plan Process"</b></p>	<p>the process set out in Clause 10.4.3 to 10.4.5 (Rectification Plan Process);</p>
<p><b>"Regulations"</b></p>	<p>a) the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);</p>
<p><b>"Reimbursable Expenses"</b></p>	<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 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>
<p><b>"Relevant Authority"</b></p>	<p>the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;</p>
<p><b>"Relevant Authority's Confidential Information"</b></p>	<ul style="list-style-type: none"> <li>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 Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</li> <li>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 Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</li> </ul>

	c) information derived from any of the above;
<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 10.6 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 following the Order Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
<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>"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 a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Part B of Order Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Order Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to a DPS or Order 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 Order Schedule 9 (Security) (if applicable);

<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form, in force as at the Order Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in DPS Schedule 8 (Self Audit Certificate);

<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 Levels"</b>	any service levels applicable to the provision of the Deliverables under the Order Contract (which, where Order Schedule 14 (Service Credits) 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 Order Form;
<b>"Services"</b>	services made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
<b>"Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
<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>"Special Terms"</b>	a) any additional Clauses set out in the DPS Appointment Form or Order Form which shall form part of the respective Contract;

<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 Start Date;
<b>"Specification"</b>	the specification set out in DPS Schedule 1 (Specification), as may, in relation to an Order Contract, be supplemented by the Order Form;
<b>"Standards"</b>	any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in DPS Schedule 1 (Specification);</li> </ul>

	c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time;  relevant Government codes of practice and guidance applicable from time to time;
<b>"Start Date"</b>	in the case of the DPS Contract, the date specified on the DPS Appointment Form, and in the case of an Order Contract, the date specified in the Order Form;
<b>"Statement of Requirements"</b>	a) a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Order Procedure;
<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 an Order Contract or the DPS 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 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>	a) any third party appointed to process Personal Data on behalf of that Processor related to a Contract;
<b>"Supplier"</b>	the person, firm or company identified in the DPS Appointment Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Order Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the DPS Appointment Form, or later defined in an Order Contract;
<b>"Supplier's Confidential Information"</b>	<p>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;</p> <p>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 a Contract;</p> <p>Information derived from any of (a) and (b) above;</p>

<b>"Supplier's Contract Manager"</b>	the person identified in the Order Form appointed by the Supplier to oversee the operation of the Order 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>"Supplier Equipment"</b>	a) 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 Order Contract;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <p>a) Achieve a Milestone by its Milestone Date;</p> <p>b) provide the Goods and/or Services in accordance with the Service Levels ; and/or comply with an obligation under a Contract;</p>

<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 an Order Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	a) 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 a Contract;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Joint Schedule 12 (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 the Order Contract detailed in the information are properly payable;
<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 a 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 an Order Contract;
<b>"Test Plan"</b>	a plan: a) for the Testing of the Deliverables; and setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to an Order Contract as set out in the Test Plan or elsewhere in an Order Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	a) 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>"Transferring Supplier"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;

<b>"Employees"</b>	
<b>"Transparency Information"</b>	<p>the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –</p> <ul style="list-style-type: none"> <li>(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and</li> <li>(ii) Commercially Sensitive Information;</li> </ul>
<b>"Transparency Reports"</b>	<p>the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Order Schedule 1 (Transparency Reports);</p>
<b>"Variation"</b>	<p>has the meaning given to it in Clause 24 (Changing the contract);</p>
<b>"Variation Form"</b>	<p>the form set out in Joint Schedule 2 (Variation Form);</p>
<b>"Variation Procedure"</b>	<p>the procedure set out in Clause 24 (Changing the contract);</p>
<b>"VAT"</b>	<p>value added tax in accordance with the provisions of the Value Added Tax Act 1994;</p>
<b>"VCSE"</b>	<p>a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;</p>
<b>"Worker"</b>	<p>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) (<a href="https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees</a>) applies in respect of the Deliverables; and</p>
<b>"Working Day"</b>	<p>any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form.</p>

## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24  
 (Changing the Contract)

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

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

DPS Schedule 6 (Order Form Template and Order Schedules)  
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Signed by an authorised signatory for and on behalf of the **[delete]** as applicable: CCS / 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

## Joint Schedule 3 (Insurance Requirements)

### 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, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") 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:
  - 1.1.1. the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.1.2. the Call-Off Contract Effective Date in respect of the Additional Insurances.
- 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 the international insurance market from time to time;
  - 1.2.3. taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4. maintained for at least six (6) years after the End Date.
- 1.3. The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority 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 Relevant Authority 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.

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

- 4.1. The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, 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**

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

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

- 6.1. The Supplier shall notify the Relevant Authority 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 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 each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2. Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 0 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 Relevant Authority) full 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 Relevant Authority

any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

#### **ANNEX: REQUIRED INSURANCES**

1. The Supplier shall hold the following [standard] insurance cover from the Framework Start Date in accordance with this Schedule:
  - 1.1. professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000) – all Lots ;
  - 1.2. public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000) – all Lots;

- 1.3. employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

## **Joint Schedule 4 (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 Order Form (which shall be deemed incorporated into the table below).
- 1.3. Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority 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	05/02/2026	IFF's written submission (3.1 to 3.5)	Indefinitely
2	05/02/2026	IFF's day rates in the pricing schedule	Indefinitely

## Joint Schedule 5 (Corporate Social Responsibility)

### What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

## Equality and Accessibility

2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:

- 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
- 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## Modern Slavery, Child Labour and Inhumane Treatment

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

3.1 The Supplier:

- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that

slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;

- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

## **Income Security**

4.1 The Supplier shall:

- 4.1.1 ensure that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 ensure that all workers are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.4 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 4.1.5 record all disciplinary measures taken against Supplier Staff;  
and
- 4.1.6 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **Working Hours**

5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;

5.1.2 ensure that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;

5.1.3 ensure that use of overtime is used responsibly, taking into account:

- (a) the extent;
- (b) frequency; and
- (c) hours worked;

by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

5.3.1 this is allowed by national law;

5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

5.3.3 appropriate safeguards are taken to protect the workers' health and safety; and

5.3.4 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **Sustainability**

6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## Joint Schedule 6 (Key Subcontractors)

### 1. Restrictions on certain subcontractors

- 1.1. The Supplier is entitled to sub-contract its obligations under the Framework Contract to the Key Subcontractors set out in the Framework Award Form.
- 1.2. The Supplier is entitled to sub-contract its obligations under a Call-Off Contract to Key Subcontractors listed in the Framework Award Form who are specifically nominated in the Order Form.
- 1.3. 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 CCS and the Buyer and the Supplier shall, at the time of requesting such consent, provide CCS and the Buyer with the information detailed in Paragraph 1.4. The decision of CCS and the Buyer to consent or not will not be unreasonably withheld or delayed. Where CCS consents to the appointment of a new Key Subcontractor then they will be added to section 20 of the Framework Award Form. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Order Form. CCS and the Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.3.1. the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.3.2. the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.3.3. the proposed Key Subcontractor employs unfit persons.
- 1.4. The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:

- 1.4.1. the proposed Key Subcontractor's name, registered office and company registration number;
- 1.4.2. the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
- 1.4.3. where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the CCS and the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
- 1.4.4. for CCS, the Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Contract Period;
- 1.4.5. for the Buyer, the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Call Off Contract Period; and
- 1.4.6. (where applicable) Credit Rating Threshold (as defined in Joint Schedule 7 (Financial Distress)) of the Key Subcontractor.
- 1.5. if requested by CCS and/or the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.4, the Supplier shall also provide:
  - 1.5.1. a copy of the proposed Key Sub-Contract; and
  - 1.5.2. any further information reasonably requested by CCS and/or the Buyer.
- 1.6. The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.6.1. provisions which will enable the Supplier to discharge its obligations under the Contracts;
  - 1.6.2. a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;
  - 1.6.3. a provision enabling CCS and the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.6.4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;
  - 1.6.5. obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Framework Contract in respect of:
    - (A) the data protection requirements set out in Clause 14 (Data protection);
    - (B) the FOIA and other access request requirements set out in Clause 16 (When you can share information);
    - (C) the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or 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);

- 1.6.6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Clauses 10.4 (When CCS or the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
- 1.6.7. 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 CCS and the Buyer.

# Joint Schedule 7 (Financial Difficulties)

## 1. Definitions

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

- |                                   |  |
|-----------------------------------|--|
| <b>"Credit Rating Threshold"</b>  | 1. the minimum credit rating level for the Monitored Company as set out in Annex 2;  |
| <b>"Financial Distress Event"</b> | 2. the occurrence of one or more of the following events: <ol style="list-style-type: none"><li>a. the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li><li>b. the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement 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 the Monitored Company;</li><li>d. Monitored Company committing a material breach of covenant to its lenders;</li><li>e. a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li><li>f. any of the following:<ol style="list-style-type: none"><li>i. commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li><li>ii. non-payment by the Monitored Company of any financial indebtedness;</li><li>iii. any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or</li><li>iv. the cancellation or suspension of any financial indebtedness in respect of the Monitored Company</li></ol></li></ol> |

- |   |   |
|---|---|
|   | 3. in each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Order Contract; |
| <b>"Financial Distress Service Continuity Plan"</b> | 4. a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with [each Order] Contract in the event that a Financial Distress Event occurs;                         |
| <b>"Monitored Company"</b>                          | 5. Supplier [the DPS Guarantor/ [and Order Guarantor] or any Key Subcontractor]   |
| <b>"Rating Agencies"</b>                            | the rating agencies listed in Annex 1.  |

## 2. When this Schedule applies

- 2.1. The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
- 2.2. The terms of this Schedule shall survive termination or expiry of this Contract:
  - 2.2.1. under the DPS Contract until the later of (a) the termination or expiry of the DPS Contract or (b) the latest date of termination or expiry of any Order Contract entered into under the DPS Contract (which might be after the date of termination or expiry of the DPS Contract); and
  - 2.2.2. under the Order Contract until the termination or expiry of the Order Contract.

## 3. What happens when your credit rating changes

- 3.1. The Supplier warrants and represents to CCS that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 2.
- 3.2. The Supplier shall promptly (and in any event within five (5) Working Days) notify CCS in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 3.3. If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide CCS within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by CCS. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company];
- B is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company]; and
- D is the value at the relevant date of the current liabilities of the Monitored Company].

3.4. The Supplier shall:

3.4.1. regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and

3.4.2. promptly notify (or shall procure that its auditors promptly notify) CCS in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5. For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

**4. What happens if there is a financial distress event**

4.1. In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and CCS shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2. In the event that a Financial Distress Event arises due to a Key Subcontractor notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, CCS shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

4.2.1. rectify such late or non-payment; or

4.2.2. demonstrate to CCS's reasonable satisfaction that there is a valid reason for late or non-payment.]

4.3. The Supplier shall and shall procure that the other Monitored Companies shall:

4.3.1. at the request of CCS meet CCS as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Order Contract; and

- 4.3.2. where CCS reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Order Contract:
- a. submit to CCS for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
  - b. provide such financial information relating to the Monitored Company as CCS may reasonably require.
- 4.4. If CCS does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to CCS within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS or referred to the Dispute Resolution Procedure.
- 4.5. If CCS considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 4.6. Following Approval of the Financial Distress Service Continuity Plan by CCS, the Supplier shall:
- 4.6.1. on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of each Contract and delivery of the Deliverables in accordance with each Order Contract;
  - 4.6.2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
  - 4.6.3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 4.7. Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify CCS and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.

4.8. CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into an Order Contract with the Supplier.

**5. When CCS or the Buyer can terminate for financial distress**

5.1. CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Order Contracts for material Default if:

5.1.1. the Supplier fails to notify CCS of a Financial Distress Event in accordance with Paragraph 3.4;

5.1.2. CCS and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

5.1.3. the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

**6. What happens if your credit rating is still good**

6.1. Without prejudice to the Supplier's obligations and CCS' and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

6.1.1. the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and

6.1.2. CCS shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

## **ANNEX 1: RATING AGENCIES**

Dun & Bradstreet

## ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

### Part 1: Current Rating

Entity	Credit rating (long term)
Supplier	2A

## Joint Schedule 8 (Guarantee)

### 1. Definitions

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

<b>"DPS Guarantor"</b>	any person acceptable to CCS to give a DPS Guarantee;
<b>"DPS Guarantee"</b>	a deed of guarantee in favour of CCS and all Buyers in the form set out in the Annex to this Schedule;
<b>"Order Guarantee"</b>	a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and
<b>"Order Guarantor"</b>	the person acceptable to a Buyer to give an Order Guarantee;

**[Guidance Note:** CCS to insert either requirement for DPS guarantee in Paragraph 1 or Paragraph to give an option for buyers to request Order guarantees]

### 2. DPS Guarantee

2.1. Where CCS has notified the Supplier that [the award of the DPS Contract is conditional upon receipt of] [prior to the execution of the first Order Contract the Supplier shall provide] a valid DPS Guarantee, then on or prior to the execution of the [DPS Contract] [first Order Contract], as a condition for the award of the [DPS Contract] [first Order Contract], the Supplier must have delivered to CCS:

- 2.1.1. an executed DPS Guarantee from a DPS Guarantor; and
- 2.1.2. a certified copy extract of the board minutes and/or resolution of the DPS Guarantor approving the execution of the DPS Guarantee.

2.2. If the Supplier fails to deliver the documents as required by Paragraphs 2.1.1 and 2.1.2 above within 30 days of request then CCS shall be entitled to terminate this DPS Contract without liability and the Buyer shall be entitled to terminate the Order Contract without liability.

2.3. Where the CCS has procured a DPS Guarantee from the Supplier pursuant to Paragraph 2.1 CCS may terminate this DPS Contract by issuing a Termination Notice to the Supplier where:

- 2.3.1. the DPS Guarantor withdraws the DPS Guarantee for any reason whatsoever;
- 2.3.2. the DPS Guarantor is in breach or anticipatory breach of the DPS Guarantee;
- 2.3.3. an Insolvency Event occurs in respect of the DPS Guarantor;
- 2.3.4. the DPS Guarantee becomes invalid or unenforceable for any reason whatsoever; or
- 2.3.5. the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the CCS;

and in each case the DPS Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to CCS.

- 2.4. Notwithstanding Clause 19 (Other people's rights in this contract), this Schedule (Guarantee) is intended to confer benefits on Buyers and is intended to be enforceable by Buyers by virtue of the CRTPA.]

## **2. Order Guarantee**

2.1 Where a Buyer has notified the Supplier that the award of the Order Contract by the Buyer shall be conditional upon receipt of a valid Order Guarantee, then, on or prior to the execution of the Order Contract, as a condition for the award of that Order Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Order Guarantee from an Order Guarantor; and

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

2.2 Where a Buyer has procured an Order Guarantee from the Supplier under Paragraph 2.4 above, the Buyer may terminate the Order Contract for Material Default where:

2.2.1 the Order Guarantor withdraws the Order Guarantee for any reason whatsoever;

2.2.2 the Order Guarantor is in breach or anticipatory breach of the Order Guarantee;

2.2.3 an Insolvency Event occurs in respect of the Order Guarantor;

2.2.4 the Order Guarantee becomes invalid or unenforceable for any reason whatsoever; or

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Order Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.]

## **Annex 1 – Form of Guarantee**

**[INSERT NAME OF THE GUARANTOR]**

**- AND -**

**[INSERT NAME OF THE BENEFICIARY]**

**DEED OF GUARANTEE**

## DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the                      day of                      20[ ]

### PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")

### WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees for the benefit of the Beneficiary as follows:

## 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.2 the words and phrases below shall have the following meanings:

**[Guidance Note:** Insert and/or settle Definitions, including from the following list, as appropriate to either DPS Guarantee or Order Guarantee]

<b>["CCS"</b>	1 has the meaning given to it in the DPS Contract;]
<b>["Beneficiary(s)"</b>	2 means [CCS and all Buyers under all Order Contracts] [ <i>insert name of the Buyer with whom the Supplier enters into an Order Contract</i> ] and "Beneficiaries" shall be construed accordingly;]
<b>["Order Contract"</b>	3 has the meaning given to it in the DPS Contract;]
<b>["DPS Contract"</b>	4 means the DPS Contract with DPS Reference RM [ <b>Insert RM number</b> ] for the Goods and/or Services dated on or about the date hereof made between CCS and the Supplier;]
<b>["Goods"</b>	5 has the meaning given to it in the DPS Contract;]
<b>["Guaranteed Agreement(s)"</b>	6 means [the DPS Contract and all Order Contracts] [the Order Contract] made between the Beneficiary and the Supplier [from time to time] [ <b>on insert date</b> ];]

**"Guaranteed Obligations"** 7 means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

**["Services"** 8 has the meaning given to it in the DPS Contract;]

**"Supplier"** means [**Insert** the name, address and registration number of the Supplier as each appears in the DPS Appointment Form].

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

- 2.2.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.2.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.3 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original

obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

**[Insert** Address of the Guarantor in England and Wales]

**[Insert** Facsimile Number]

For the Attention of **[Insert** details]

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

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

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

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

#### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
  - 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

## **6. GUARANTOR INTENT**

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **7. RIGHTS OF SUBROGATION**

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **8. DEFERRAL OF RIGHTS**

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably

paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
  - 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
  - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
  - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
  - 8.1.5 claim any set-off or counterclaim against the Supplier;
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
  - 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
    - 1.1.1.1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
    - 1.1.1.2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
    - 1.1.1.3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
  - 1.1.2. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed

of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

- 1.1.3. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **2. PAYMENTS AND SET-OFF**

- 2.1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 2.2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 2.3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **3. GUARANTOR'S ACKNOWLEDGEMENT**

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

## **4. ASSIGNMENT**

- 4.1. The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 4.2. The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## **5. SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## **6. THIRD PARTY RIGHTS**

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 7. SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

## 8. GOVERNING LAW

- 8.1. This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 8.2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 8.3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 8.4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

**[Guidance Note:** Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

- 8.5. [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

## Joint Schedule 10 (Rectification Plan)

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

DPS Schedule 6 (Order Form Template and Order Schedules)  
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	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan [CCS/Buyer]</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for Rejection (if applicable)	[add reasons]		
Signed by [CCS/Buyer]		Date:	

# Joint Schedule 11 (Processing Data)

## Definitions

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

**“Processor Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

## Status of the Controller

2. 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. A Party may act as:
  - a. “Controller” in respect of the other Party who is “Processor”;
  - b. “Processor” in respect of the other Party who is “Controller”;
  - c. “Joint Controller” with the other Party;
  - d. “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.

## Where one Party is Controller and the other Party its Processor

3. 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.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - a. a systematic description of the envisaged Processing and the purpose of the Processing;
  - b. an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects; and

- d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- a. 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;
  - b. ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 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:
    - i. nature of the data to be protected;
    - ii. harm that might result from a Data Loss Event;
    - iii. state of technological development; and
    - iv. cost of implementing any measures;
  - c. ensure that :
    - i. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
    - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - A. are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
      - B. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
      - D. have undergone adequate training in the use, care, protection and handling of Personal Data;
  - d. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

- ii. the Data Subject has enforceable rights and effective legal remedies;
    - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - e. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 7 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - b. receives a request to rectify, block or erase any Personal Data;
  - c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f. becomes aware of a Data Loss Event.
8. The Processor's obligation to notify under paragraph 6 of this Joint Schedule 11 shall include the provision of further information to the Controller in phases, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a. the Controller with full details and copies of the complaint, communication or request;
  - b. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Controller following any Data Loss Event; and/or

- e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a. the Controller determines that the Processing is not occasional;
  - b. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - c. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- a. notify the Controller in writing of the intended Subprocessor and Processing;
  - b. obtain the written consent of the Controller;
  - c. enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
  - d. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
14. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
15. The Relevant Authority may, at any time on not less than 30 Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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

17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11 (*Processing Data*).

#### **Independent Controllers of Personal Data**

18. 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.

19. 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.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 17 of this Joint Schedule 11, 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.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
  - a. to the extent necessary to perform their respective obligations under the Contract;
  - b. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - c. where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
25. 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 the Contract ("**Request Recipient**"):
  - a. 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
  - b. 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:

- i. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - ii. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - a. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - b. implement any measures necessary to restore the security of any compromised Personal Data;
  - c. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - d. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 15 of this Joint Schedule 11 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 16 to 27 of this Joint Schedule 11.

### Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: [REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>The supplier will be collecting and holding basic personal data in order to contact respondents for the Research</p>

Duration of the Processing	6 months from February
Nature and purposes of the Processing	To enable the Alcohol Duty Reform Research, the Supplier will receive a sample of UK alcohol producers and conduct desk-based qualitative research on their experiences with the new Alcohol Duty Reform.
Type of Personal Data	where available: Business name, address, telephone number and email address.
Categories of Data Subject	Alcohol Producers in the United Kingdom
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	The HMRC Project Team will ensure that any data held will not be retained for longer than required and will be deleted as necessary on the project's completion

## Joint Schedule 12 (Supply Chain Visibility)

### 1. Definitions

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

<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities;
<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 sized enterprises;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of this Schedule 12; and
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

### 2. Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The Supplier shall:

2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;

2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;

- 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
  - 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Relevant Authority in the format and frequency as reasonably specified by the Relevant Authority; and
  - 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 12 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligation on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Effective Date.
- 2.4 Notwithstanding Paragraph 2.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

### **3. Visibility of Supply Chain Spend**

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the "SME Management Information Reports") to the Relevant Authority which incorporates the data described in the Supply Chain Information Report Template which is:
- (a) the total contract revenue received directly on the Contract;
  - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Relevant Authority from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1(a) –(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant

Authority agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

### **Annex 1**

## **Supply Chain Information Report template**



Supply Chain Information  
Report templat

## Order Schedule 1 (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 the DPS Contract, within three (3) Months of the Start 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 - TBC

Title	Content	Format	Frequency
Performance			
Order Contract Charges			
Key Subcontractors			
Technical			
Performance management			

## Order Schedule 2 (Staff Transfer)

[Guidance note: Buyers will need to take their own legal advice on this Schedule 2 and, in particular, on Part D (Pensions).

Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department's Employment Law Group]

## 1. Definitions

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

<b>“Acquired Rights Directive”</b>	1. the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as
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	<p>amended or re-enacted from time to time;</p>
<p><b>"Employee Liability"</b></p>	<p>2. 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> </ul>
	<ul style="list-style-type: none"> <li>b. unfair, wrongful or constructive dismissal compensation;</li> </ul>
	<ul style="list-style-type: none"> <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> </ul>
	<ul style="list-style-type: none"> <li>d. compensation for less favourable treatment of part-time workers or fixed term employees;</li> </ul>
	<ul style="list-style-type: none"> <li>e. outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;</li> </ul>

	<p><b>f.</b> employment claims whether in tort, contract or statute or otherwise;</p>
	<p><b>g.</b> any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
<p><b>"Former Supplier"</b></p>	<p>a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);</p>
<p><b>"New Fair Deal"</b></p>	<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>i. any amendments to that document immediately prior to the Relevant Transfer Date; and</li> <li>ii. 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>
<p><b>"Old Fair Deal"</b></p>	<p>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;</p>

<p><b>"Partial Termination"</b></p>	<p>the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);</p>
<p><b>"Relevant Transfer"</b></p>	<p>a transfer of employment to which the Employment Regulations applies;</p>
<p><b>"Relevant Transfer Date"</b></p>	<p>in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions 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;</p>
<p><b>"Staffing Information"</b></p>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p>
	<p>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</p>
	<p>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</p>
	<p>(c) the identity of the employer or relevant contracting Party;</p>
	<p>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</p>
	<p>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</p>

	(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
	(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
	(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
	(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
	(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;
<b>"Supplier's Final Supplier Personnel 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 Personnel 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>"Term"</b>	the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;
<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.
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**2. INTERPRETATION**

- 2.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, 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.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "Third Party Provisions") confer benefits on third parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this Order Contract has no right under the CRTPA to enforce any term of this Order Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 2.4 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.
- 2.5 Any amendments or modifications to this Order Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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

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

**[Delete if not applicable to the Call Off Contract]**

- [Part A (Staff Transfer at the Start Date – Outsourcing from the Buyer)]
- [Part B (Staff Transfer at the Start Date – Transfer from a Former Supplier)]
- [Part C (No Staff Transfer on the Start Date)]
- [Part D (Pensions) ]
- [ - Annex D1 (CSPS) ]
- [ - Annex D2 (NHSPS) ]
- [ - Annex D3 (LGPS) ]
- [ - Annex D4 (Other Schemes) ]
- Part E (Staff Transfer on Exit)

## **PART A: STAFF TRANSFER AT THE START DATE OUTSOURCING FROM THE BUYER**

### **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(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-contractor and each such Transferring Buyer Employee.
- 1.2. 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 (without limit) 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 his/her employment from the Buyer to the Supplier and/or any 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 Subcontractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; 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 his/her 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. If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1. the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing; and

2.3.2. the Buyer may offer (or may procure that a third party may offer) employment to such person, 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 Law, within 15 Working Days of receipt of notice from the Supplier and/or any Subcontractor.

2.4. If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that a Subcontractor shall, immediately release the person from his/her employment or alleged employment;

2.5. If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:

2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. the situation has not otherwise been resolved,

the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6. Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law and subject also to Paragraph 2.7, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7. The indemnity in Paragraph 2.6:

2.7.1. shall not apply to:

a. any claim for:

i. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

ii. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or

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

2.7.2. shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer within 6 months of the Start Date

2.8. If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Buyer nor dismissed by the Supplier and/or any Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or

shall procure that the relevant Subcontractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **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. 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 his/her 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 Sub-contractor 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 Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, 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, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date (including (without limit) 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 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**
- 4.1. The Supplier shall, and shall procure that each Subcontractor 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 and any 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 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. Any changes embodied in 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**

- 6.1. The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:
  - 6.1.1. 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
  - 6.1.2. Part D: Pensions (and its Annexes) to this Schedule.

## **PART B: STAFF TRANSFER AT THE START DATE**

### **TRANSFER FROM A FORMER 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 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 (without limit) 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 2.2, 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 his/her employment from the Former Supplier to the Supplier and/or any 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 Subcontractor as appropriate may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; 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 his/her 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 If any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer and in writing and, where required by the Buyer, notify 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 the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the Supplier and/or the Subcontractor (as appropriate).
- 2.4 If an offer referred to in Paragraph 2.3.2 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 his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
  - 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.6 Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law and subject also to Paragraph 2.7, 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 pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
  - 2.7.1 shall not apply to:
    - (a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the 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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer and, if applicable, the Former Supplier, within 6 months of the Start Date.

2.8 If Subcontractor any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under applicable Law.

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

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer and/or 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 his/her 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 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, without limitation, 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 all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including (without limit) 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 any 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, 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 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 2007;
  - 5.1.2 Old Fair Deal; and/or

5.1.3 The New Fair Deal.

5.2 Any changes embodied in 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 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 Part D: Pensions (and its Annexes) to this Schedule.

## **PART C: NO STAFF TRANSFER ON THE START DATE**

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

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive 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, notify the Former Supplier in writing; and
  - 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 within 15 Working Days of the notification from the Supplier or the Subcontractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier),, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period referred to in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved;the Supplier may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the Supplier and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Buyer shall:
  - 1.5.1 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 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the

- Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 1.5.2 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 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.6 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 1.4 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, comply with such obligations as may be imposed upon it under Law.
- 1.7 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.6, 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.
- 1.8 The indemnities in Paragraph 1.5:
- 1.8.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Subcontractor to the Buyer and, if applicable, Former Supplier within 6 months of the Start Date.

- 1.9 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

[Guidance: You should take specific legal advice on this Part D. Please also note that this Part D is drafted to reflect the requirements of New Fair Deal. Accordingly, where a contracting authority is a best value authority it will be subject to the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 if appropriate) and should take further specific legal advice to ensure compliance with those Directions.]

### 1. Definitions

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

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;
<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>	(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/or
	(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,

	and " <b>Broad Comparability</b> " shall be construed accordingly;
<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>	each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (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>	any of:
	a. Transferring Buyer Employees;
	b. Transferring Former Supplier Employees;
	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 2.5 of Parts A or B or Paragraph 1.4 of Part C;
	d. where the Supplier or a Subcontractor was the Former Supplier, the employees of the Supplier (or Subcontractor);
	who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Buyer;

<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the scheme as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D;
	(a)
	(b)
<b>"Statutory Schemes"</b>	means the CSPA, NHSPS or LGPS.

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

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ 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<sup>1</sup>.

### **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);
- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of the relevant Contract.

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

4.1 The Supplier shall indemnify and keep indemnified CCS, [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 arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/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 the relevant 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:

Subcontractor:

- (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

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<sup>1</sup> We recommend that you seek specific legal advice on this clause.

Date until the date of termination or expiry of the relevant Contract; or

(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 the relevant 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 the relevant Contract; and

4.2.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

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

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the CCS and/or the Buyer and/or 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 CCS and/or the Buyer and/or 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 CCS and/or the Buyer and/or the Supplier; and

5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

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 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

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

7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:

- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

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

8.1 Save on expiry or termination of the relevant Contract, if the employment of any Fair Deal Eligible 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 or shall procure that any relevant Sub-contractor 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 arrangements for participation with the relevant Statutory Scheme(s);
- 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Eligible 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 Eligible 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 the relevant Contract.

9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant 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 CSPS and/or the relevant Administering Buyer 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<sup>2</sup>;
  - 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 set up 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):
- 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;

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<sup>2</sup>We recommend that you seek specific legal advice on this clause.

- 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<sup>3</sup>; 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 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 the relevant 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

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<sup>3</sup> We recommend that you seek specific legal advice on this clause.

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 Scheme in Other Circumstances**

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS 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<sup>4</sup>;
  - 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

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<sup>4</sup> We recommend that you seek specific legal advice on this clause.

- 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;
- 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<sup>5</sup>; 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

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<sup>5</sup> We recommend that you seek specific legal advice on this clause.

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 the relevant 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 the relevant 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 LGPA or any LGPA Admission Agreement in respect of the LGPA 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 the relevant Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

## Annex D1:

# Civil Service Pensions Schemes (CSPS)

### Definitions

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

<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 CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a 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;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

### Access to equivalent pension schemes after transfer

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

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

## Annex D2: NHS Pension Schemes

### Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint 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 Fair Deal Employees;</p>
<p><b>"NHS Broadly Comparable Employees"</b></p>	<p>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>

	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.
<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>	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 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),
	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/ Determination or other NHSPS "access" facility but who has never been employed directly by the Buyer, an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Fair Deal 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 the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<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 NHS 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

	<p>have been or is 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;</p>
<p><b>"Pension Benefits"</b></p>	<p>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.</p>

### **Membership of the NHS Pension Scheme**

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 the relevant Contract.

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 Supplier must ensure that:

- (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
- (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.

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.

The Supplier must ensure (and procure that each of its Sub-Contracts (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.

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.

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.

The Supplier will (and will procure that its Subcontractors (if any) will) Subcontractor provide any guarantee, bond or indemnity required by NHS Pensions in relation to a Direction Letter/Determination.

### **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.

### **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.

### **What the buyer can do if the Supplier breaches its pension obligations**

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 Subcontractor) 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.

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 to 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. Subcontractor.

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

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

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

a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Fair Deal 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.

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 the Contract.

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

The Supplier must indemnify and keep indemnified the CCS, 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 his or her employment rights.

## Annex D3:

### Local Government Pension Schemes (LGPS)

[Guidance: You should take specific legal advice on this Annex D3 and in particular the risk apportionment provisions contained herein.

Please note that this Part D is drafted to reflect the requirements of New Fair Deal. Accordingly, where a contracting authority is a local authority (or other type of best value authority) then it will be subject to the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 if appropriate) and should take further specific legal advice to ensure compliance with those Directions.

Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Buyer, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether CCS and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

#### 1. Definitions

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint 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 Buyer"</b>	in relation to <b>the Fund [insert name]</b> , the relevant Administering Buyer of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Buyer of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>

<b>["Initial Contribution Rate"<sup>6</sup>]</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 2013 Regulations;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<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; ;
<b>"LGPS Regulations"</b>	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), 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 to become an 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 the relevant Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each

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<sup>6</sup> We recommend that you seek specific legal advice on this definition.

become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before 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 the relevant Contract.

### **OPTION 1<sup>7</sup>**

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 Buyer in relation to an LGPS Admission Agreement.

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<sup>7</sup> We recommend that you seek specific legal advice on this clause.

### **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 Buyer 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 the relevant 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<sup>8</sup>**

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant Contract the Administering Buyer, 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 the relevant Contract, the Administering Buyer, 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:

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<sup>8</sup> We recommend that you seek specific legal advice on this clause.

- A = 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
- B = 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 Buyer 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

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<sup>9</sup> We recommend that you seek specific legal advice on this clause.

- 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 Buyer 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 Buyer 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 the 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 Buyer 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 the relevant Contract.

## **Annex D4: Other Schemes**

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

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

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

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement 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 Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):

:

- 1.5.1 replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

and shall promptly notify, and procure that each Subcontractor shall 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 relevant Subcontractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Buyer such information as the Buyer may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Subcontractor 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 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Subcontractor 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 Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

## **2. 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 the relevant 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 and/or the Acquired Rights Directive will apply. The Buyer and the Supplier 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(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement 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 in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) 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 Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the

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 on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any 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 on or before the Service Transfer Date;

2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the 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 on or before 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 (and including) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any 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 indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement 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 his/her 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 If any person who is not identified in the Supplier's Final Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of

becoming aware of that fact, notify the Buyer and the Supplier in writing; and

2.5.2 the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor.

2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, Buyer shall procure that the Replacement Supplier shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;

2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer has been made:

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Buyer shall advise the Replacement Supplier and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;

2.8 Subject to the Replacement Supplier's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, 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 pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

In any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within 6 months of the Service Transfer Date..

- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Subcontractor nor dismissed by the Replacement Supplier and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee. .
- 2.11 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 Personnel 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:  
the Supplier and/or any Subcontractor; and  
  
the Replacement Supplier and/or the Replacement Subcontractor.
- 2.12 The Supplier shall, and shall procure that each Subcontractor 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.
- 2.13 Subject to Paragraph 2.14, 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:

- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
  - any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel 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;
- 2.13.4 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 Personnel 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 Personnel 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;
- 2.13.5 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 Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or 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 after the Service Transfer Date;
- 2.13.7 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 Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel 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.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any 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.

## Order Schedule 3 (Continuous Improvement)

### 1. Buyer's Rights

- 1.1. The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

### 2. Supplier's Obligations

- 2.1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3. In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 2.3.1. identifying the emergence of relevant new and evolving technologies;
  - 2.3.2. changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);

- 2.3.3. new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
- 2.3.4. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 2.4. The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.
- 2.5. The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7. If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
  - 2.8.1. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11. Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.12. At any time during the Contract Period of the Order Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan

so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

## Order Schedule 4 (Order Tender)

1.0	<b>Attachments</b>		
1.1	Specification - Alcohol Duty Reform		Specification - Alcohol Duty Reform Research.docx
1.2	HMRC Further Competition and Evaluation Criteria		HMRC Further Competition and Evaluation Criteria Template 2023 v8 (3) (002).docx
1.3	Contract Documents		DPS Joint & Order Schedules.zip
1.4	Cost Model		Cost Model.xlsx
1.5	Cabinet Office Metrics		Cabinet Office Metrics.xlsx
1.6	Clarification Template		Clarification- Version 4.xlsm
1.7	Risk Register		Risk Register.xls
1.8	Social Value KPI Template		Social Value KPI Template.xlsx
1.9	Social Value Model Bidder Response		Social Value Model Bidder Response Template.docx
2	Selection Questionnaires		
2.1	Part 1 Questions (General Information)		

1.2	Please confirm all Part 1 (General Information) details remain compliant with the selection criteria assessed when joining the Framework		Yes
1.3	If you have answered "No" to question 2.1.1 please provide an explanation of what details have changed since joining the Framework		N/A
2.4	Part 2: Exclusion Grounds		
4.5	Please confirm all Part 2 (Exclusion Grounds) remain compliant with the selection criteria assessed when joining the Framework		Yes, we still meet these obligations
4.6	If you have answered NO to question 2.2.1 please provide details to explain where you are no longer compliant and what measures have been taken to demonstrate your reliability despite the existence of relevant grounds for exclusion (Self cleaning)		N/A
2.7	Part 3 Questions (Selection Criteria Questions)		
7.8	Requirement		Economic and Financial Standing

7.9	<p>If documentary evidence of economic and financial standing is available electronically (e.g. financial statements filed with Companies House), please provide:</p> <ul style="list-style-type: none"> <li>- the web address</li> <li>- issuing authority</li> <li>- precise reference of the documents.</li> </ul>		<p>"Link to Companies House filing:  <a href="https://find-and-update.company-information.service.gov.uk/company/00849983/filing-history">https://find-and-update.company-information.service.gov.uk/company/00849983/filing-history</a></p> <p>We have also attached accounts as requested below"</p>
7.10	<p>If documentary evidence of economic and financial standing is not available electronically, please provide a copy of your detailed accounts for the last two years (audited if required by law).</p>		<p>IFF Research Statutory Accounts year ended 31 03 24.pdf</p>
7.11	<p>If you cannot provide an electronic link to your audited accounts, and cannot provide a copy, please provide any of the following alternatives:</p> <p>(a) A statement of your annual turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year(s) of trading and a bank letter outlining the current cash and credit facility position.</p> <p>(b) Alternative</p>		<p>IFF Research Statutory Accounts year ended 31 03 23.pdf</p>

	<p>information to evidence economic and financial standing if any of the above are not available (e.g. forecast financial statements and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status). Please upload a Word document stating “Not Applicable” If you have provided an electronic link to your audited accounts or have provided a copy.</p>		
7.12	<p>Where we have specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this procurement, please ‘self-certify’ that you meet the requirements set out in the procurement documents</p>		<p>Yes, we meet the minimum level of economic and financial standing and/or minimum financial threshold specified</p>
7.13	<p>Requirement</p>		<p>Technical and Professional Ability</p>
7.14	<p>Please confirm all Part 3 (Selection Criteria Questions) remain compliant with the selection criteria assessed when joining the Framework</p>		<p>Yes, we still meet these obligations</p>

7.15	<p>If you have answered "No" to question 2.3.7 please provide an explanation of what details have changed since joining the Framework. If these changes have resulted in any areas of non-compliance with the framework selection criteria, please also describe what measures have been taken to demonstrate your reliability despite the existence of this non-compliance (Self cleaning).</p>		N/A
7.16	Requirement		Insurance
7.17	<p>&lt;br&gt;Insurance&lt;br&gt;Please confirm whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:&lt;br&gt;&lt;br&gt;Employer's (Compulsory) Liability Insurance = &amp;pound; 5,000,000&lt;br&gt;Public Liability Insurance = &amp;pound; 1,000,000&lt;br&gt;Professional Indemnity Insurance = &amp;pound; 1,000,000&lt;br&gt;&lt;br&gt;&lt;br&gt;&gt;*There is a legal requirement for certain employers to hold Employer's (Compulsory) Liability Insurance of &amp;pound;5 million as a minimum. See the Health and</p>		Yes

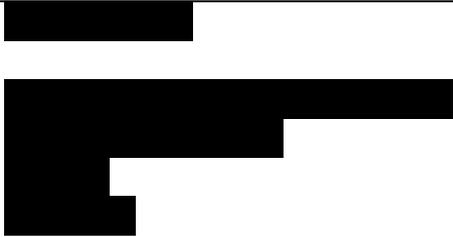
	<p>Safety Executive website for more information:  <a href="http://www.hse.gov.uk/pubns/hse39.pdf">http://www.hse.gov.uk/pubns/hse39.pdf</a>.</p>		
7.18	Requirement		Data Protection
7.19	<p>Data Protection</p> <p>Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the UK General Data Protection Regulations and to ensure the protection of the rights of data subjects.</p> <p>Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with UK data protection law and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures:</p> <ul style="list-style-type: none"> <li>- to ensure ongoing confidentiality,</li> </ul>		<p>We confirm that we have in place, the human and technical resources to perform the contract to ensure compliance with the UK General Data Protection Regulations and to ensure the protection of the rights of data subjects.</p>

	<p>integrity, availability and resilience of processing systems and services;</p> <ul style="list-style-type: none"> <li>- to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data;</li> <li>- to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable;</li> <li>- to ensure legal safeguards are in place to legitimise transfers of personal data outside the UK (if such transfers will take place);</li> <li>- to maintain records of personal data processing activities; and</li> <li>- to regularly test, assess and evaluate the effectiveness of the above measures.</li> </ul>		
7.20	Requirement		Accessibility Questionnaire
7.21	<p>If your proposed service offering includes the use of any product(s) or service(s) that will be provided through a web browser, desktop application or mobile application and will be used by HMRC service users (e.g.,</p>		Not Applicable.docx

	HMRC staff or customers), please download and complete the supporting document titled "Accessibility Evidence Questionnaire", then upload the completed document in response to this question. Please upload a Word document stating "Not Applicable" where this does not apply.		
7.22	Requirement		Security Questionnaire
7.23	Please download and complete the supporting document titled "Security Questionnaire", then upload the completed document in response to this question.		Security Questionnaire - IFF Research.xlsx
7.24	Requirement		Conflicts of Interest
7.25	Are you aware of any conflict of interest (COI), including those detailed within The Public Contracts Regulations 2015 Regulation 24, that could arise due to the bidding organisation's participation in the procurement procedure? Please respond either "Yes" or "No". If yes, please also provide details of the COI and describe your proposals for mitigating such a conflict.		No

	<p>HMRC will look to remedy any COI without excluding the bidder from the procurement process wherever possible. HMRC does however reserve the right to exclude the bidder from this procurement process where such a COI cannot be remedied by other means, to the satisfaction of HMRC. Withholding knowledge of a COI may result in disqualification from the tender exercise. Once a contract is awarded, the supplier still has a continuing obligation to make HMRC aware of any new conflicts and to maintain where necessary any mitigating actions.</p>		
7.26	Requirement		Declaration

7.27	<p>I declare that to the best of my knowledge the answers submitted and information contained in this complete document are correct and accurate, including parts 1, 2 and part 3.</p> <p>I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document except where this documentation can be accessed by the contracting authority via a national database in any country free of charge or the contracting authority already possesses the documentation.</p> <p>I understand that the information will be used in the selection process to assess my suitability to participate further in this procurement.</p> <p>I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.</p>		Yes, I agree to all parts of the declaration
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	I am aware of the consequences of serious misrepresentation.		
7.28	Contact details of those making the declaration:  - Contact name - Name of organisation - Role in organisation - Phone number - E-mail address - Postal address		
3	Award Questionnaires		
3.1	Addressing Aims and Objectives Tenderers are required to demonstrate: • The extent to which the proposed approach demonstrates that it will deliver in full the aims and objectives specified in section 3 (in the tender		Attached

	<p>specification document). • The extent to which the Tenderer demonstrates they have understood the context and key issues for the project and have subsequently presented an approach which has been tailored to meet HMRC’s requirement Your response to this section should not exceed 4 pages.</p>		
<p>3.2</p>	<p>Methodology and Scope Tenderers are required to demonstrate: • The extent to which the proposed methodology meets the requirements as set out in section 4 in full. • The extent to which the Tenderer proposes an appropriate and effective recruitment strategy for the specific participants. • The extent to which data collection strategies maximise successful contact with the sample. • The extent to which the Tenderer can demonstrate that their approach incorporates proven methods to minimise recruitment risks. • The extent to which the proposed outputs meet the requirements set out in section 4 in full, and the extent to which these have been</p>		<p>Attached</p>

	<p>tailored to best suit the aims and objectives. Your response to this section should not exceed 10 pages</p>		
3.3	<p>Project Plan (Delivery to time) Tenderers are required to demonstrate:</p> <ul style="list-style-type: none"><li>• That their strategy will deliver each of the required activities as set out in section 7 and any additional activities as outlined by the tenderer in their approach, in full within the required timelines or sooner</li><li>• The extent to which key risks to the project have been identified in the risk register and how effective the proposed mitigation strategies are in minimising the impact and /or likelihood of these risks</li></ul> <p>Your response to this section should not exceed 6 pages. Tenderers are expected to provide a project plan including a detailed timetable for the proposed research for each specific information requirement, and a</p>		Attached

	<p>completed risk register which outlines in detail the risks to the project and methods for mitigating them. This particular document should be attached to the written tender as an annex and not exceed 2 pages; information beyond this limit will not be considered during evaluation.</p>		
<p>3.4</p>	<p>Team Tenderers are required to demonstrate:</p> <ul style="list-style-type: none"> <li>• The extent to which the proposed team meets the required experience and expertise in full as outlined in Section 8. Please include the staffing level of each member of the team and the number of days given to each key stage of the project per team member in this section (but do not include the costs).</li> <li>• The extent to which the proposed team composition and team management approach will ensure that the team has the capacity to deliver the requirement in full, even during busy periods or in periods of absence and/or illness. Your response to this</li> </ul>		<p>Attached</p>

	<p>section should not exceed 2 pages. Tenderers are expected to provide CVs for the key personnel proposed, their role and area of expertise. The CVs should not exceed 1 page or contain photographs.</p>		
3.5	<p>Quality Standards                  Tenderers are required to demonstrate: • They are able to meet the professional accreditation and/or quality standards as set out in Section 7. • The proposed internal procedures will effectively assure quality control as set out in section 8 of the specification. Your response to this section should not exceed 3 pages. Tenderers are expected to provide a quality control plan to demonstrate the procedures that will be implemented to assure quality control. This particular document should be attached to the written tender as an annex and not exceed 4 pages; information beyond this limit will not be considered during evaluation</p>		Attached

3.6	<p>Social Value The requirements of the Social Value Model (SVM) (see PPN 06/20) apply to all above threshold tenders subject to the Public Contracts Regulations, advertised from 1st January 2021. Tenders in scope of the model must carry a minimum 10% weighting for the SVM question. SVM questions and evaluation criteria should be based on the guidance included in the Cabinet Office Guide To Using The Social Value Model. See HMRC SVM Guidance for further information.</p>		Attached
3.7	Award Criteria - Charges and Invoicing		
7.8	<p>Please confirm you have completed the bid section for this event. Please note that the bid section must be fully completed as this will be the basis of the commercial evaluation of bids. Please bear in mind that all costings arrived at during the tender process will be included in Charges and Invoicing Schedule of the final contract awarded to the successful Tenderer(s). There will be no opportunity to directly negotiate prices so it is important that</p>		Yes

	competitive pricing is used at the outset. The Client does reserve the right to clarify costs as may be necessary. Should you need to provide any explanation of your proposed costs then please do so in the text box provided.		
7.9	Bid Section		
3.10	Pricing Submission Tenderers are required to complete the pricing submission in the Cost Model. Please pay attention to the guidance within the document.		Attached
1.0	Cost Model	GBP	████████
1.0	Cost Model	Quantity	1
1.0	Cost Model	Extended Price	████████

**Attachments**

**REDACTED**

## Order Schedule 5 (Pricing Details)

Redacted

## Order Schedule 7 (Key Supplier Staff)

- 1.1 The Annex 1 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.
- 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 maternity 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 he or she has 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
Authorised Representative and Contract Manager	████	████
Director	████	████
Senior Research Manager	████	████
Senior Research Executive	████	████
Research Executive	████	████

# Order Schedule 8 (Business Continuity and Disaster Recovery)

## 1. Definitions

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

<b>"BCDR Plan"</b>	has the meaning given to it in Paragraph 2.2 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.3.2 of this Schedule;
<b>"Disaster Recovery Deliverables"</b>	the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.3.3 of this Schedule;
<b>"Disaster Recovery System"</b>	the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Related Supplier"</b>	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.2 of this Schedule; and
<b>"Supplier's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;

## 2. BCDR Plan

2.1. The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.

2.2. At least ninety (90) Working Days after the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "BCDR Plan"), which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.2.1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
- 2.2.2. the recovery of the Deliverables in the event of a Disaster

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

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

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

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

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

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

## 5. Disaster Recovery (Section 3)

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

## 6. Review and changing the BCDR Plan

- 6.1. The Supplier shall review the BCDR Plan:
- 6.1.1. on a regular basis and as a minimum once every six (6) Months;
  - 6.1.2. within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph **Error! Reference source not found.**; and
  - 6.1.3. where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 6.2. Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the

Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

- 6.3. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "Review Report") setting out the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4. Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5. The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

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

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

7.5.2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

7.5.3. the Supplier's proposals for remedying any such failures.

7.6. Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## **8. Invoking the BCDR Plan**

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

## **9. Circumstances beyond your control**

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

# Schedule 9 (Consultancy Security Schedule)

## Buyer Options

### Risk assessment

The Buyer has assessed this Contract as:	a standard consultancy agreement	<input checked="" type="checkbox"/>
	a higher-risk consultancy agreement	<input type="checkbox"/>

### Relevant Certifications

Where the Buyer has assessed this Contract as a standard consultancy agreement, it requires the Supplier to be certified as compliant with:	No certification required	<input type="checkbox"/>
	Cyber Essentials (or equivalent)	<input checked="" type="checkbox"/>
	Cyber Essentials Plus (or equivalent)	<input checked="" type="checkbox"/>

### Buyer Security Policies

The Buyer requires the Supplier to comply with the following policies relating to security management: <ul style="list-style-type: none"> <li>• Cyber Essentials</li> <li>• Cyber Essentials Plus</li> <li>• ISO/IEC 27001</li> </ul>	<input checked="" type="checkbox"/>
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### Staff Vetting Procedure

The Buyer requires a Staff Vetting Procedure other than BPSS. Where the Buyer selects this option, the alternative Staff Vetting Procedure with which the Supplier must comply is: <ul style="list-style-type: none"> <li>• <b>[Set out any Buyer Security Vetting Procedure with which the Supplier and Sub-contractors must comply]</b></li> </ul>	<input type="checkbox"/>
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## 1. Supplier obligations

- 1.1. Where the Buyer has assessed this Contract as a higher-risk consultancy agreement, the Supplier must comply with all requirements in this Schedule 9 (Security).
- 1.2. Where the Buyer has assessed this Contract as a standard consultancy agreement, the Supplier must comply with this Schedule 16 (Security), other than:
  - a. the requirement to be certified as compliant with ISO/IEC 27001:2022 (or equivalent) under Paragraph (A); and
  - b. the requirement to undertake security testing of the Supplier Information Management System in accordance with Paragraph 9 of Appendix 1.

- c. the requirement to produce a Security Management Plan in accordance with Paragraph 9.

## 2. Definitions

In this Schedule 9 (Security):

**“Anti-virus Software”**

means software that:

- protects the Supplier Information Management System from the possible introduction of Malicious Software;
- scans for and identifies possible Malicious Software in the Supplier Information Management System;
- if Malicious Software is detected in the Supplier Information Management System, so far as possible:
  - prevents the harmful effects of the Malicious Software; and
  - removes the Malicious Software from the Supplier Information Management System.

**“Breach of Security”**

means the occurrence of:

- (a) any unauthorised access to or use of the Services, the Sites, the Supplier System and/or the Government Data;
- (b) the loss (physical or otherwise), corruption and/or unauthorised disclosure of any Government Data, including copies of such Government Data; and/or
- (c) any part of the Supplier System ceasing to be compliant with the Relevant Certifications;
- (d) the installation of Malicious Software in the Supplier System;
- (e) any loss of operational efficiency or failure to operate to specification as the result of the installation or operation of Malicious Software in the Supplier System; and
- (f) includes any attempt to undertake the activities listed in sub-Paragraph (a) where the Supplier has reasonable grounds to suspect that attempt:
  - (i) was part of a wider effort to access information and communications technology operated by or on behalf of Central Government Bodies; or

(ii) was undertaken, or directed by, a state other than the United Kingdom;

<b>“Buyer Equipment”</b>	means any hardware, computer or telecoms devices, and equipment that forms part of the Buyer System.
<b>“Certification Default”</b>	means the occurrence of one or more of the circumstances listed in Paragraph 6.4.
<b>“Certification Rectification Plan”</b>	means the plan referred to in Paragraph 6.5.
<b>“Certification Requirements”</b>	means the information security requirements set out in Paragraph 6.
<b>“CHECK Scheme”</b>	means the NCSC’s scheme under which approved companies can conduct authorised penetration tests of public sector and critical national infrastructure systems and networks.
<b>“CHECK Service Provider”</b>	means a company which, under the CHECK Scheme: (a) has been certified by the National Cyber Security Centre; (b) holds "Green Light" status; and (c) is authorised to provide the IT Health Check services required by Paragraph 9 of the Security Requirements.
<b>“CHECK Team Leader”</b>	means an individual with a CHECK Scheme team leader qualification issued by the NCSC.
<b>“CHECK Team Member”</b>	means an individual with a CHECK Scheme team member qualification issued by the NCSC.
<b>“Cyber Essentials”</b>	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme.
<b>“Cyber Essentials Plus”</b>	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme.
<b>“Cyber Essentials Scheme”</b>	means the Cyber Essentials scheme operated by the National Cyber Security Centre.
<b>“End-user Device”</b>	means any personal computers, laptops, tablets, terminals, smartphones or other portable electronic device provided by the Supplier or a Sub-contractor and used in the provision of the Services.

<b>“Expected Behaviours”</b>	means the expected behaviours set out and updated from time to time in the Government Security Classification Policy, currently found at paragraphs 12 to 16 and in the table below paragraph 16 of <a href="https://www.gov.uk/government/publications/government-security-classifications/guidance-11-working-at-official-html">https://www.gov.uk/government/publications/government-security-classifications/guidance-11-working-at-official-html</a> .
<b>“Government Security Classification Policy”</b>	means the policy, as updated from time to time, establishing an administrative system to protect information assets appropriately against prevalent threats, including classification tiers, protective security controls and baseline behaviours, the current version of which is found at <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a> .
<b>“Handle”</b>	means any operation performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of that data.
<b>“HMG Baseline Personnel Security Standard”</b>	means the employment controls applied to any individual member of the Supplier Staff that performs any activity relating to the provision or management of the Services, as set out in “HMG Baseline Personnel Standard”, Version 7.0, June 2024( <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> ), as that document is updated from time to time.
<b>“NCSC Device Guidance”</b>	means the National Cyber Security Centre’s document “Device Security Guidance”, as updated or replaced from time to time and found at <a href="https://www.ncsc.gov.uk/collection/device-security-guidance">https://www.ncsc.gov.uk/collection/device-security-guidance</a> .
<b>“Privileged User”</b>	means a user with system administration access to the Supplier Information Management System, or substantially similar access privileges.
<b>“Prohibited Activity”</b>	means the storage, access or Handling of Government Data prohibited by a Prohibition Notice.
<b>“Prohibition Notice”</b>	means a notice issued under Paragraph 1.2 of Appendix <b>1</b> .
<b>“Relevant Certifications”</b>	means those certifications specified in Paragraph 6.
<b>“Relevant Convictions”</b>	means any previous or pending prosecution, conviction or caution (excluding any spent conviction under the Rehabilitation of Offenders Act 1974) relating to offences involving dishonesty, terrorism, immigration, firearms, fraud, forgery, tax evasion, offences against people (including sexual offences), or any other offences relevant to Services as the Buyer may specify.

<b>“Remote Location”</b>	means a location other than a Supplier’s or a Sub-contractor’s Site.
<b>“Remote Working”</b>	means the provision or management of the Services by Supplier Staff from a location other than a Supplier’s or a Sub-contractor’s Site.
<b>“Remote Working Policy”</b>	the policy prepared and approved under Paragraph 3.9 of the Security Requirements under which Supplier Staff are permitted to undertake Remote Working.
<b>“Security Controls”</b>	means the security controls set out and updated from time to time in the Government Security Classification Policy, currently found at Paragraph 12 of <a href="https://www.gov.uk/government/publications/government-security-classifications/guidance-15-considerations-for-security-advisors-html">https://www.gov.uk/government/publications/government-security-classifications/guidance-15-considerations-for-security-advisors-html</a>
<b>“Security Management Plan”</b>	means the document prepared in accordance with the requirements of Paragraph 7.4.
<b>“Standard Contractual Clauses”</b>	means the standard data protection clauses specified in Article 46 of the United Kingdom General Data Protection Regulation setting out the appropriate safeguards for the transmission of personal data outside the combined territories of the United Kingdom and the European Economic Area.
<b>“Supplier Information Management System”</b>	means: <ul style="list-style-type: none"><li>those parts of the information and communications technology system and the Sites that the Supplier or its Sub-contractors will use to provide the Services; and</li><li>the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources).</li></ul>
<b>“Sub-contractor Staff”</b>	means: <ul style="list-style-type: none"><li>any individual engaged, directly or indirectly, or employed, by any Sub-contractor; and</li><li>engaged in or likely to be engaged in:<ul style="list-style-type: none"><li>the performance or management of the Services;</li><li>or the provision of facilities or services that are necessary for the provision of the Services.</li></ul></li></ul>
<b>“UKAS”</b>	means the United Kingdom Accreditation Service.
<b>UKAS-recognised Certification Body</b>	means: <ul style="list-style-type: none"><li>(a) an organisation accredited by UKAS to provide certification of ISO/IEC27001:2013 and/or ISO/IEC27001:2022; or</li><li>(d) an organisation accredited to provide certification of ISO/IEC27001:2013 and/or ISO/IEC27001:2022 by a body with the equivalent functions as UKAS in a state with which the UK has a mutual recognition agreement recognising the technical equivalence of accredited conformity assessment.</li></ul>

### 3. Introduction

3.1. This Schedule 16 (Security) sets out:

- a. the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Government Data, the Services and the Supplier Information Management System;
- b. the assessment of this Contract as either a:
  - i. standard consultancy agreement; or
  - ii. higher-risk consultancy agreement, in Paragraph 0;
- c. the Buyer's access to the Supplier Staff and Supplier Information Management System, in Paragraph 4.4;
- d. the Certification Requirements, in Paragraph 6;
- e. in the case of higher-risk consultancy agreements, the requirements for a Security Management Plan in Paragraph 7.4.
- f. the security requirements with which the Supplier and Sub-contractors must comply in Appendix 1.

### 4. Principles of security

- 4.1. The Supplier acknowledges that the Buyer places great emphasis on the confidentiality, integrity and availability of the Government Data and, consequently on the security of:
- a. the Sites;
  - b. the Services; and
  - c. the Supplier's Information Management System.

- 4.2. The Supplier is responsible for:
- a. the security, confidentiality, integrity and availability of the Government Data when that Government Data is under the control of the Supplier or any of its Sub-contractors; and
  - b. the security of the Supplier Information Management System.
- 4.3. The Supplier must:
- h. comply with the security requirements in Appendix 1; and
  - i. ensure that each Sub-contractor that Handles Government Data complies with the security requirements in Appendix 1.
- 4.4. Where the Supplier, a Sub-contractor or any of the Supplier Staff is granted access to the Buyer System or to the Buyer Equipment, it must comply with and ensure that all such Sub contractors and Supplier Staff comply with, all rules, policies and guidance provided to it and as updated from time to time concerning the Buyer System or the Buyer Equipment.

## **5. Access to Supplier Staff and Supplier Information Management System**

- 5.1. The Buyer may require, and the Supplier must provide the Buyer and its authorised representatives with:
- access to the Supplier Staff;
  - access to the Supplier Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and such other information and/or documentation that the Buyer or its authorised representatives may reasonably require, to assist the Buyer to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Government Data; and
  - the Supplier Information Management System are consistent with the representations in the Security Management Plan.
- 5.2. The Supplier must provide the access required by the Buyer in accordance with Paragraph 5 within ten Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Buyer with the access that it requires within 24 hours of receipt of such request.

## **6. Certification Requirements**

- 6.1. The Supplier shall ensure that, unless otherwise agreed by the Buyer, it is certified as compliant with:

- (A) in the case of a standard consultancy agreement the option chosen by the Buyer in Paragraph 0; or
- (B) in the case of a higher-risk consultancy agreement:  
either:
  - A. an ISO/IEC 27001:2022 certification by a UKAS-Recognised Certification Body in respect of the Supplier Information Management System (or an equivalent certification); or
  - B. where the Supplier Information Management System is included within the scope of a wider ISO/IEC 27001:2022 certification (or an equivalent certification) that certification; and

Cyber Essentials Plus (or an equivalent certification) (**“Relevant Certifications”**).

- 6.2. Unless otherwise agreed by the Buyer, the Supplier must provide the Buyer with a copy of the Relevant Certifications before it begins to provide the Services.
- 6.3. The Supplier must ensure that at the time it begins to provide the Services, the Relevant Certifications are:
  - currently in effect;
  - together, relate to the full scope of the Supplier Information System;
  - and
  - are not subject to any condition that may impact the provision of the Services.
- 6.4. The Supplier must notify the Buyer promptly, any in any event within three Working Days of becoming aware that:
  - (A) a Relevant Certification in respect of the Supplier Information Management System has been revoked or cancelled by the body that awarded it.
  - (B) a Relevant Certification in respect of the Supplier Information Management System has expired and has not been renewed by the Supplier;
  - (C) the Relevant Certifications, together, no longer apply to the full scope of the Supplier Information Management System or
  - (D) the body that awarded a Relevant Certification has made it subject to conditions, the compliance with which may impact the provision of the Services (each a “Certification Default”).

- 6.5. Where the Supplier has notified the Buyer of a Certification Default under Paragraph 6.4:
- A. the Supplier must, within ten working Days of the date in which the Supplier provided notice under Paragraph 6.4 (or such other period as the Parties may agree) provide a draft plan (a “Certification Rectification Plan”) to the Supplier setting out:
    - full details of the Certification Default, including a root cause analysis;
    - the actual and anticipated effects of the Certification Default;
    - the steps the Supplier will take to remedy the Certification Default;
  - B. the Buyer must notify the Supplier as soon as reasonably practicable whether it accepts or rejects the Certification Rectification Plan;
  - C. if the Buyer rejects the Certification Rectification Plan, the Buyer must within five Working Days of the date of the rejection submit a revised Certification Rectification Plan and Paragraph B will apply to the re-submitted plan;
  - D. the rejection by the Buyer of a revised Certification Rectification Plan is a material Default of this Contract;
  - E. if the Buyer accepts the Certification Rectification Plan, the Supplier must start work immediately on the plan.

## **7. Government Data Handled USING SUPPLIER INFORMATION MANAGEMENT SYSTEM**

- 7.1. The Supplier acknowledges that the Supplier Information Management System:
- a. is intended only for the Handling of Government Data that is classified as OFFICIAL; and
  - b. is not intended for the Handling of Government Data that is classified as SECRET or TOP SECRET,
- in each case using the Government Security Classification Policy.
- 7.2. The Supplier must:
- not alter the classification of any Government Data; and
  - if it becomes aware that any Government Data classified as SECRET or TOP SECRET is being Handled using the Supplier Information Management System:
    - immediately inform the Buyer; and
    - follow any instructions from the Buyer concerning that Government Data.
- 7.3. The Supplier must, and must ensure that Sub-contractors and Supplier Staff, when Handling Government Data, comply with:
- (A) the Expected Behaviours; and
  - (B) the Security Controls.

- 7.4. Where there is a conflict between the Expected Behaviours or the Security Controls and this Schedule 16 (Security) the provisions of this Schedule 16 (Security) shall apply to the extent of any conflict.

## 8. Security Management Plan

- 8.1. This Paragraph 9 applies only where the Buyer has assessed that this Contract is a higher-risk consultancy agreement.

### Preparation of Security Management Plan

- 8.2. The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule 16 (Security) and the Contract in order to ensure the security of the Government Data and the Supplier Information Management System.

- 8.3. The Supplier shall prepare and submit to the Buyer within 20 Working Days of the date of this Call-Off Contract, the Security Management Plan, which must include:

an assessment of the Supplier Information Management System against the requirements of this Schedule 16 (Security), including Appendix 1;

the process the Supplier will implement immediately after it becomes aware of a Breach of Security to restore normal operations as quickly as possible, minimising any adverse impact on the Government Data, the Buyer, the Services and/or users of the Services;

the Remote Working Policy (where the Supplier or a Sub-contractor proposes to allow Supplier Staff to work from a Remote Location);  
and

the following information in respect of each Sub-contractor:

the Sub-contractor's:

- A. legal name;
- B. trading name (if any);
- C. registration details (where the Sub-contractor is not an individual);

the Sites used by the Sub-contractor;

the Government Data Handled by the Sub-contractor;

the Handling that the Sub-contractor will undertake in respect of the Government Data;

the measures the Sub-contractor has in place to comply with the requirements of this Schedule 16 (Security ).

- 8.4. The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and must issue the Supplier with either:
- (C) an information security approval statement, which shall confirm that the Supplier may use the Supplier Information Management System to Handle Government Data; or
  - (D) a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.
- 8.5. If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier must prepare a revised Security Management Plan taking the Buyer's reasons into account, which the Supplier must submit to the Buyer for review within ten Working Days of the date of the rejection, or such other period agreed with the Buyer.

#### **Updating Security Management Plan**

- 8.6. The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.

#### **Monitoring**

- 8.7. The Supplier shall notify the Buyer within two Working Days after becoming aware of:
- a significant change to the components or architecture of the Supplier Information Management System;
  - a new risk to the components or architecture of the Supplier Information Management System;
  - a vulnerability to the components or architecture of the Supplier Information Management System using an industry standard vulnerability scoring mechanism;
  - a change in the threat profile;
  - a significant change to any risk component;
  - a significant change in the quantity of Personal Data held within the Service;
  - a proposal to change any of the Sites from which any part of the Services are provided; and/or
  - an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.
- 8.8. Within ten Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Security Management Plan and submit the updated Security Management Plan to the Buyer for review and approval.

## Appendix 1: Security requirements

### 1. Location

- 1.1. Unless otherwise agreed with the Buyer, the Supplier must, and must ensure that its Sub-contractors must, at all times, store, access or Handle Government Data either:
- a. in the United Kingdom; or
  - b. in a location permitted by and in accordance with any regulations for the time being in force made under section 17A of the Data Protection Act 2018 (adequacy decisions by the Secretary of State).
- 1.2. The Supplier must, and must ensure that its Subcontractors store, access or Handle Government Data in a facility operated by an entity where:
- a. the entity has entered into a binding agreement with the Supplier or Subcontractor (as applicable);
  - b. that binding agreement includes obligations on the entity in relation to security management at least as onerous as those relating to Sub-contractors in this Schedule 16] (Security);
  - c. the Supplier or Subcontractor has taken reasonable steps to assure itself that:
    - (i) the entity complies with the binding agreement; and
    - (ii) the Subcontractor's system has in place appropriate technical and organisational measures to ensure that the Sub-contractor will store, access, manage and/or Handle the Government Data as required by this Schedule 9 (Security);
  - d. the Buyer has not given the Supplier a Prohibition Notice under Paragraph 1.3.
- 1.3. The Buyer may by notice in writing at any time give notice to the Supplier that it and its Sub-contractors must not undertake or permit to be undertaken, the storage, access or Handling Government Data as specified in the notice (a "**Prohibited Activity**").
- a. in any particular country or group of countries;
  - b. in or using facilities operated by any particular entity or group of entities; or
  - c. in or using any particular facility or group of facilities, whether operated by the Supplier, a Sub-contractor or a third-party entity (a "**Prohibition Notice**").

- 1.4. Where the Supplier or Sub-contractor, on the date of the Prohibition Notice undertakes any Relevant Activities affected by the notice, the Supplier must, and must procure that Sub-contractors, cease to undertake that Prohibited Activity within 40 Working Days of the date of the Prohibition Notice.

### 2. Physical Security

- 2.1. The Supplier must ensure, and must ensure that Sub-contractors ensure, that:

- a. all locations at which Government Data is Handled (**Secure Locations**) have the necessary physical protective security measures in place to prevent unauthorised access, damage and interference, whether malicious or otherwise, to that Government Data;
- b. the operator of each Secure Location has prepared a physical security risk assessment and a site security plan for the Secure Location.

### **3. Vetting, Training and Staff Access**

#### **Vetting before performing or managing Services**

3.1. The Supplier must not engage Supplier Staff, and must ensure that Sub-contractors do not engage Sub-contractor Staff, in any activity relating to the performance and management of the Services unless:

- a. That individual has passed the security checks listed in Paragraph 3.2; or
- b. The Buyer has given prior written permission for a named individual to perform a specific role.

3.2. For the purposes of Paragraph 3.1, the security checks are:

- a. the checks required for the HMG Baseline Personnel Security Standard (BPSS) to verify:
  - (iii) the individual's identity;
  - (iv) the individual's nationality and immigration status so as to demonstrate that they have a right to work in the United Kingdom;
  - (v) the individual's previous employment history; and
  - (vi) that the individual has no Relevant Convictions;
- b. national security vetting clearance to the level specified by the Buyer for such individuals or such roles as the Buyer may specify; or
- c. such other checks for the Supplier Staff of Sub-contractors as the Buyer may specify.

#### **Exception for certain Sub-contractors**

3.3. Where the Supplier considers it cannot ensure that a Sub-contractors will undertake the relevant security checks on any Sub-contractor Staff, it must:

- a. as soon as practicable, and in any event within 20 Working Days of becoming aware of the issue, notify the Buyer;
- b. provide such information relating to the Sub-contractor, its vetting processes and the roles the affected Sub-contractor Staff will perform as the Buyer reasonably requires; and
- c. comply, at the Supplier's cost, with all directions the Buyer may provide concerning the vetting of the affected Sub-contractor Staff and the management of the Sub-contractor.

### **Annual training**

3.4. The Supplier must ensure, and ensure that Sub-contractors ensure, that all Supplier Staff, complete and pass security training at least once every calendar year that covers:

- a. general training concerning security and data handling; and
- b. phishing, including the dangers from ransomware and other malware.

### **Staff access**

3.5. The Supplier must ensure, and ensure that Sub-contractors ensure, that individual Supplier Staff can access only the Government Data necessary to allow individuals to perform their role and fulfil their responsibilities in the provision of the Services.

3.6. The Supplier must ensure, and ensure that Sub-contractors ensure, that where individual Supplier Staff no longer require access to the Government Data or any part of the Government Data, their access to the Government Data or that part of the Government Data is revoked immediately when their requirement to access Government Data ceases.

3.7. Where requested by the Buyer, the Supplier must remove, and must ensure that Sub-contractors remove, an individual Supplier Staff's access to the Government Data or part of that Government Data specified by the Buyer as soon as practicable and in any event within 24 hours of the request.

### **Remote Working**

3.8. The Supplier must ensure, and ensure that Sub-contractors ensure, that:

- a. unless approved in writing by the Authority, Privileged Users do not undertake Remote Working;
- b. where the Authority permits Remote Working by Privileged Users, the Supplier ensures, and ensures that Sub-contractors ensure, that such Remote Working takes place only in accordance with any conditions imposed by the Authority.

3.9. Where the Supplier or a Sub-contractor wishes to permit Supplier Staff to undertake Remote Working, it must:

- a. prepare and have approved by the Buyer the Remote Working Policy in accordance with this Paragraph;
- b. undertake and, where applicable, ensure that any relevant Sub-contractors undertake, all steps required by the Remote Working Policy;
- c. ensure that Supplier Staff undertake Remote Working only in accordance with the Remote Working Policy;
- d. may not permit any Supplier Staff of the Supplier or any Sub-contractor to undertake Remote Working until the Remote Working Policy is approved by the Buyer.

3.10. The Remote Working Policy must include or make provision for the following matters:

- a. restricting or prohibiting Supplier Staff from printing documents in any Remote Location;
- b. restricting or prohibiting Supplier Staff from downloading any Government Data to any End-user Device other than an End-user Device that:
  - 1. is provided by the Supplier or Sub-contractor (as appropriate); and
  - (ii) complies with the requirements set out in Paragraph 4 (*End-user Devices*);
- c. ensuring that Supplier Staff comply with the Expected Behaviours (so far as they are applicable);
- d. giving effect to the Security Controls (so far as they are applicable); and
- e. for each different category of Supplier Staff subject to the proposed Remote Working Policy:

the types and volumes of Government Data that the Supplier Staff can Handle in a Remote Location and the Handling that those Supplier Staff will undertake;  
any identified security risks arising from the proposed Handling in a Remote Location;  
the mitigations, controls and security measures the Supplier or Sub-contractor (as applicable) will implement to mitigate the identified risks; and  
the business rules with which the Supplier Staff must comply.

3.11. The Supplier may submit a proposed Remote Working Policy to the Buyer for consideration at any time.

#### **4. End-user Devices**

4.1. The Supplier must manage, and must ensure that all Sub-contractors manage, all End-user Devices on which Government Data is stored or Handled in accordance the following requirements:

- e. the operating system and any applications that store, Handle or have access to Government Data must be in current support by the vendor, or the relevant community in the case of open source operating systems or applications;
- f. users must authenticate before gaining access;
- g. all Government Data must be encrypted using a encryption tool agreed to by the Buyer;
- h. the End-user Device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the End-user Device is inactive;
- i. the End-User Device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Government Data;
- j. the Supplier or Sub-contractor, as applicable, can, without physical access to the End-user Device, remove or make inaccessible all Government Data on the device and prevent any user or group of users from accessing the device;
- k. all End-user Devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001:2018 certification issued

by a UKAS-Recognised Certification Body (or equivalent certifications), where the scope of that certification includes the Services.

- 4.2. The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance as if those recommendations were incorporated as specific obligations under this Contract.
- 4.3. Where there any conflict between the requirements of this Schedule 16(Security) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

## **5. Encryption**

- 5.1. Unless Paragraph 5.2 applies, the Supplier must ensure, and must ensure that all Sub-contractors ensure, that Government Data is encrypted:
  - (a) when stored at any time when no operation is being performed on it; and
  - (b) when transmitted.
- 5.2. Where the Supplier, or a Sub-contractor, cannot encrypt Government Data as required by Paragraph 5.1, the Supplier must:
  - (a) immediately inform the Buyer of the subset or subsets of Government Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
  - (b) provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Buyer as encryption;
  - (c) provide the Buyer with such information relating to the Government Data concerned, the reasons why that Government Data cannot be encrypted and the proposed protective measures as the Buyer may require.
- 5.3. The Buyer, the Supplier and, where the Buyer requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Government Data.
- 5.4. This Paragraph applies where the Buyer has assessed that this Contract is a higher-risk consultancy agreement.

Where the Buyer and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

- (a) the subset or subsets of Government Data not encrypted and the circumstances in which that will occur;
- (b) the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Government Data.

- 5.5. Where the Buyer and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Buyer that it could not encrypt certain Government Data, either party may refer the matter to be determined by an expert in accordance with the Dispute Resolution Procedure.

## **6. Backup and recovery of Government Data**

- 6.1. The Supplier must ensure that the Supplier System:  
RM6126 - Research & Insights DPS  
Project Version: v1.0  
Model Version: v1.3

- (a) backs up and allows for the recovery of Government Data to achieve the recovery point and recovery time objectives specified by the Buyer, or in accordance with Good Industry Practice where the Buyer has not specified; and
- (b) retains backups of the Government Data for the period specified by the Buyer, or in accordance with Good Industry Practice where the Buyer has not specified.

6.2. The Supplier must ensure the Supplier System:

- (a) uses backup location for Government Data that are physically and logically separate from the rest of the Supplier System;
- (b) the backup system monitors backups of Government Data to:
  - (i) identifies any backup failure; and
  - (ii) confirm the integrity of the Government Data backed up;
- (c) any backup failure is remedied promptly;
- (d) the backup system monitors the recovery of Government Data to:
  - (i) identify any recovery failure; and
  - (ii) confirm the integrity of Government Data recovered; and
- (e) any recovery failure is promptly remedied.

## 7. Access Control

7.1. The Supplier must, and must ensure that all Sub-contractors:

- (a) identify and authenticate all persons who access the Supplier Information Management System and Sites before they do so;
- (b) require multi-factor authentication for all user accounts that have access to Government Data or that are Privileged Users;
- (c) allow access only to those parts of the Supplier Information Management System and Sites that those persons require;
- (d) maintain records detailing each person's access to the Supplier Information Management System and Sites, and make those records available to the Buyer on request.

7.2. The Supplier must ensure, and must ensure that all Sub-contractors ensure, that the user accounts for Privileged Users of the Supplier Information Management System:

- (a) are accessible only from dedicated End-user Devices;

- (b) are configured so that those accounts can only be used for system administration tasks;
- (c) require passwords with high complexity that are changed regularly;
- (d) automatically log the user out of the Supplier Information Management System after a period of time that is proportionate to the risk environment during which the account is inactive.

7.3. The Supplier must require, and must ensure that all Sub-contractors require, that Privileged Users use unique and substantially different passwords for their different accounts on the Supplier Information Management System.

7.4. The Supplier must, and must ensure that all Sub-contractors:

- (a) configure any hardware that forms part of the Supplier Information Management System that is capable of requiring a password before it is accessed to require a password; and
- (b) change the default password of that hardware to a password of high complexity that is substantially different from the password required to access similar hardware.

## **8. Malicious Software**

8.1. The Supplier shall install and maintain Anti-virus Software or procure that Anti-virus Software is installed and maintained on the Supplier Information Management System.

8.2. The Supplier shall ensure that such Anti-virus Software:

- (a) prevents the installation of the most common forms of Malicious Software in the Supplier Information Management System;
- (b) is configured to perform automatic software and definition updates;
- (c) performs regular scans of the Supplier Information Management System to check for and prevent the introduction of Malicious Software; and
- (d) where Malicious Software has been introduced into the Supplier Information Management System, identifies, contains the spread of, and minimises the impact of Malicious Software.

8.3. If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

8.4. Any Breach of Security caused by Malicious Software where the Breach of Security arose from a failure by the Supplier, or a Sub-contractor, to comply with this Paragraph 8 is a material Default.

## **9. Security Testing**

9.1. This Paragraph applies only where the Buyer has assessed that this Contract is a higher-risk consultancy agreement.

**Note:** the definition of Supplier Information Management System includes those information and communications technology systems that Sub-contractors will use to assist or contribute to the Supplier providing the Services.

9.2. The Supplier must before providing the Services and when reasonably requested by the Buyer, either:

- (a) provide details of any security testing undertaken by a CHECK Service Provider in respect of the Supplier Information Management System in the calendar year immediately preceding the Buyer's request or the Effective Date (as appropriate), including:
  - (I) the parts of the Supplier Information Management System tested;
  - (II) a full, unedited and unredacted copy of the testing report; and
  - (III) the remediation plan prepared by the Supplier to address any vulnerabilities disclosed by the security testing; and
  - (IV) the Supplier's progress in implementing that remediation plan; or
- (b) where no such testing was undertaken, conduct security testing of the Supplier Information Management System by:
  - (I) engaging a CHECK Service Provider and ensuring that the CHECK Service Provider uses a qualified CHECK Team Leader and CHECK Team Members to perform the testing;
  - (II) designing and implementing the testing so as to minimise its impact on the Supplier Information Management System and the delivery of the Services; and
  - (III) providing the Buyer with a full, unedited and unredacted copy of the testing report without delay and in any event within ten Working Days of its receipt by the Supplier.

9.3. The Supplier must remediate any vulnerabilities classified as "medium" or above in the security testing:

- (a) before Handling Buyer data where the vulnerability is discovered before the Supplier begins to Handle Government Data;
- (b) where the vulnerability is discovered when the Supplier has begun to Handle Government Data:
  - (I) by the date agreed with the Buyer; or
  - (II) where no such agreement is reached:
    - A. within five Working Days of becoming aware of the vulnerability and its classification where the vulnerability is classified as critical;



provide to the Buyer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.

10.5. The Supplier must take the steps required by Paragraph 10.2 at its own cost and expense.

### **11. Sub-contractors**

11.1. The Supplier must, before entering into a binding Sub-contract with any Sub-contractor:

- (a) undertake sufficient due diligence of the proposed Sub-contractor to provide reasonable assurance that the proposed Sub-contractor can perform the obligations that this Schedule requires the Supplier ensure that the proposed Sub-contractor performs;
- (b) keeps adequate records of the due diligence it has undertaken in respect of the proposed Sub-contractors; and
- (c) provides those records to the Buyer on request.

### **12. Third-party software and tools**

12.1. Before using any software or tool as part of the Supplier Information Management System, the Supplier must:

- (a) perform adequate due diligence to determine whether there are any recognised security vulnerabilities with that software or tool; and
- (b) where there are any recognised security vulnerabilities, either:
  - (I) remedy vulnerabilities; or
  - (II) ensure that the design of the Supplier Information Management System mitigates those vulnerabilities;
- (c) keep adequate records of the due diligence and efforts to remedy or mitigate identified vulnerabilities; and
- (d) provide the Buyer with copies of those records on request.

12.2. The Supplier must ensure that all software used to provide the Services remains at all times in full security support, including any extended or bespoke security support.

### **13. Deletion and return of Government Data**

13.1. The Supplier must, and must ensure that all Sub-contractors, securely erase any or all Government Data held by the Supplier or Sub-contractor when requested to do so by the Buyer using a deletion method that ensures that even a determined expert using specialist techniques can recover only a small fraction of the data deleted.

13.2. Paragraph 13.1 does not apply to Government Data:

- (a) that is Personal Data in respect of which the Supplier is a Controller;
- (b) to which the Supplier has rights to Handle independently from this Contract; or
- (c) in respect of which, the Supplier is under an obligation imposed by Law to retain.

13.3. The Supplier must, and must ensure that all Subcontractors, provide the Buyer with copies of any or all Government Data held by the Supplier or Subcontractor:

- (a) when requested to do so by the Buyer; and using the method specified by the Buyer

## Part B – Annex 2 - Security Management Plan

Please confirm that you and any sub-contractors you use will comply with the statements below as part of your contract with HMRC *When you cannot please add an explanation below the relevant question*

		Able to comply
1	<b>Governance</b> You must have a senior manager who has overall responsibility for security within your organisation	✓
2	<b>Governance</b> You must have an organisational Security Policy	✓
3	<b>Data Protection</b> You must comply with <a href="#">UK GDPR</a> including the requirement for a nominated Data Protection Officer (DPO)	✓
4	<b>Personnel</b> You must ensure that all of your staff who will work on the HMRC contract have undergone <a href="#">Baseline Personnel Security Standard</a> checks as a minimum before the contract commences	✓
5	<b>Training</b> You must ensure that all staff undergo security awareness training as part of their induction	✓
6	<b>Access Management</b> You must have controls in place to ensure that principle of least privilege is implemented so staff will only have the minimum levels of access to HMRC data/systems required to do their job	✓
7	<b>Asset Management?</b> You must have an asset inventory that details the asset, the owner & the location?	✓
8	<b>Vulnerability Management</b> You must conduct regular (at least annual) security tests on your systems	✓
9	<b>Incident Management</b> You must have incident management processes in place to deal with a security incident and recover from it	✓
10	<b>Resilience</b> You must have a Business Continuity/Disaster Recovery plan in place to ensure continuity of service delivery to HMRC prior to go live	✓

	Yes	No
<p><b>Offshoring</b> Will you (or any of your sub-contractors) offshore any part of your service to HMRC? If yes you will need to follow the HMRC Offshoring Approval process, your contract manager will advise you of the information you need to provide.</p>	<input type="checkbox"/>	✗

## Order Schedule 10 (Exit Management)

### D. Definitions

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint 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 DPS Application or Order 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>"Registers"</b>	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<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>"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 Notice"</b>	has the meaning given to it in Paragraph 5.1 of this Schedule;
<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 this Schedule;
<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.

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

- 2.1. The Supplier shall within 30 days from the Start 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 promptly:
  - 2.2.1. create and maintain 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. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables  
("Registers").
- 2.3. The Supplier shall:
  - 2.3.1. ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

- 2.3.2. 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.
- 2.4. Each Party shall appoint an Exit Manager within three (3) Months of the Start 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 an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 4.3. The Exit Plan shall set out, as a minimum:
  - 4.3.1. a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.2. how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.3. 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;
  - 4.3.4. 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;
  - 4.3.5. 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;
  - 4.3.6. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.7. proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.8. proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.9. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.10. any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4. The Supplier shall:
  - 4.4.1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - 4.4.1.1. every [six (6) months] throughout the Contract Period; and
    - 4.4.1.2. no later than [twenty (20) Working Days] after a request from the Buyer for an up-to-date copy of the Exit Plan;
    - 4.4.1.3. 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;
    - 4.4.1.4. 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
  - 4.4.2. jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

- 4.5. 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.
- 4.6. 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 date that the Supplier ceases to provide the Deliverables.
- 5.2. The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. 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.
- 5.3. 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 **Error! Reference source not found.**, 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 Performance Indicators (PI's) or 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 Registers to the Buyer;
  - 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. vacate any Buyer Premises;
  - 7.2.2. 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;
  - 7.2.3. 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:
    - 7.2.3.1. such information relating to the Deliverables as remains in the possession or control of the Supplier; and
    - 7.2.3.2. 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. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## 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 Registers 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:

8.2.2.1. the Exclusive Assets that are not Transferable Assets; and

8.2.2.2. 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.

- 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 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## **9. No charges**

8.10. 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**

10.1. 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:

10.1.1. the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2. 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

10.1.3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **Order Schedule 14 (Service Levels)**

Not used

## **Order Schedule 15 (Order Contract Management)**

Not used

## **Order Schedule 16 (Benchmarking)**

Not used

## **Order Schedule 17 (MOD Terms)**

Not used

# Order Schedule 18 (Background Checks)

## 1. When you should use this Schedule

This Schedule should be used where Supplier Staff must be vetted before working on the Contract.

## 2. Definitions

“**Relevant Conviction**” means any conviction listed in Annex 1 to this Schedule.

## 3. Relevant Convictions

3.1. The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.2. Notwithstanding Paragraph 3.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

- a) carry out a check with the records held by the Department for Education (DfE);
- b) conduct thorough questioning regarding any Relevant Convictions; and
- c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

## **Annex 1 – Relevant Convictions**

**ALL**

# Order Schedule 20 (Order Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Order Contract



## Understanding Alcohol Producers' Experiences Of Alcohol Duty Reforms

**CCS Research & Insights DPS (RM6126)**

### Research Specification

**November 2025**

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## 1. Introduction

- 1.1. HM Revenue & Customs (HMRC) invites Suppliers from the Research & Insights DPS (RM6126) to undertake research aimed at understanding alcohol producers' experiences of recent reforms to Alcohol Duty.
- 1.2. HMRC intends for this contract to be in place by 16 February 2026, with final outputs expected by 22<sup>nd</sup> of June 2026.
- 1.3. HMRC will be responsible for overall management of the project.

## 2. Context

- 2.1. Alcohol Duty is a tax charged on alcoholic products that are produced and released into free circulation, in the United Kingdom. There have been a number of recent reforms and modernisations of Alcohol Duty, which are outlined below.
- 2.2. From August 2023, Alcohol Duty has been calculated according to a product's strength (alcohol by volume or ABV). Before this date, wine, cider and other fermented products were taxed according to volume rather than strength.
- 2.3. Also in August 2023, two new Alcohol Duty reliefs were introduced: Small Producer Relief (SPR) and Draught Relief.
  - SPR enables eligible producers to pay a lower rate of Alcohol Duty on any product with an ABV under 8.5%<sup>10</sup>.
  - Draught Relief enables eligible producers to pay a lower rate on products sold in certain containers for on-trade consumption, if their ABV is under 8.5%<sup>11</sup>.
- 2.4. In March 2025 a new digital service was launched. This required alcohol producers to switch their monthly Alcohol Duty returns and payments from paper to online.
- 2.5. The Alcohol Duty reforms have six strategic objectives:
  - a) Greater consumer choice, especially of low-strength products
  - b) Reduced alcohol-related harm
  - c) Improved competitiveness of on-trade versus off-trade<sup>12</sup>
  - d) Flourishing domestic industry including for small-scale production of alcoholic drinks, such as cider, craft beer and OFP

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<sup>10</sup> See <https://www.gov.uk/guidance/check-if-youre-eligible-for-small-producer-relief-on-alcohol-duty>

<sup>11</sup> See <https://www.gov.uk/guidance/check-if-you-can-pay-less-alcohol-duty-on-draught-products>

<sup>12</sup> On-trade is the sale of alcohol for immediate consumption at the same location (e.g. at restaurants or bars), while off-trade refers to alcohol sold for consumption elsewhere (e.g. alcohol sold in the supermarket which is consumed at home)

- e) Simplification of the tax system, including domestic producers spending less time and money meeting their tax obligations
- f) More informed policymaking for Alcohol Duty

2.6. HMRC are conducting an evaluation of the Alcohol Duty reforms against these objectives. This research will inform the overall evaluation alongside evidence from other sources, such as HMRC analysis of Alcohol Duty returns data.

2.7. This research project will examine alcohol producers' experiences of the reforms, particularly in relation to strategic objective (e) above - simplification of the tax system. The research will also explore the impact of the reforms on producers' business decisions. Particular questions of interest here are whether they have reformulated products as a result of the reforms, and the impact of SPR and Draught Relief on the sale of products for on-trade consumption and small producers.

### **3. Research Aims & Objectives**

#### **Aim**

3.1. The overarching aim of this work is to understand alcohol producers' experiences of the recent Alcohol Duty reforms.

#### **Objectives**

3.2. The core objective of this research is to assess to what extent the Alcohol Duty reforms are meeting their strategic objectives (see 2.5) and particularly strategic objective (e), simplification of the tax system.

3.3. The research aims to answer the following questions for alcohol producers:

a. What are their experiences of calculating how much Alcohol Duty is payable and submitting digital returns since the reforms began?

- Are they confident about the process?
- What is their experience of submitting a digital return?
- How does it compare to before the reforms? Is it simpler? Are there any benefits/challenges? Could anything be improved?
- Have they sought any support from HMRC/other sources? Why?
- Have the changes affected the time/resource needed to submit returns?

b. What impacts have the reforms had on their business and decision-making?

- Has demand for products changed?
- Have they reformulated existing products or offered new products?
- Have the reforms impacted them financially?
- Have they been affected in any other way?

c. How has SPR affected producers claiming it?

- How has SPR impacted their business (i.e. products made, business growth, financially, and in any other way)?
- d. How has Draught Relief affected producers claiming it?
- How has this impacted their business (i.e. products made, business growth, financially and in any other way)?
- 3.4. Whilst the research questions must meet the objectives listed in section 3.3, the list of research sub-questions above is not exhaustive. Through engagement between HMRC and the appointed agency further questions may be identified. HMRC also expects that the research materials will enter into further depth than that outlined above.
- 3.5. HMRC is open to suppliers' suggestions for additional research questions and amendments to the list above. Any changes must be fully justified with reference to the overarching policy context.

#### 4. Methodology

- 4.1. HMRC anticipates that the research aims and objectives will be best met by in-depth qualitative interviews with alcohol producers. A broad methodological approach is proposed below.
- 4.2. Suppliers shall submit a proposal aligned to the methodological approach set out in this section. HMRC will draw upon the expertise of the tenderers when finalising the methodology. If tenderers suggest alternative options or other changes to the methodology or scope, these must be fully justified as better achieving the aims and objectives of this study. HMRC welcomes examples drawn from other research to demonstrate how these techniques may deliver the requirements of this specification.
- 4.3. Each supplier's approach must be fully justified and any risks fully explained.
- 4.4. The supplier shall conduct approximately 50 in-depth interviews in total. HMRC is open to tenderers' suggestions on how to structure the sample, taking account of the following:
- 2,870 alcohol producers have submitted an Alcohol Duty return since the reforms were introduced<sup>13</sup>
  - HMRC is particularly interested in the experiences of those claiming the two new tax reliefs (1,585 producers claim SPR and 1,504 claim Draught Relief).
  - Suppliers shall detail in their proposal how they will ensure producers of different types of alcohol (1,463 produce beer, 379 wine, 291 spirits, 160 cider, 143 other fermented products) are represented.
  - There are ~650 producers who submit returns under the new system but pay their duty in a different way. Suppliers should detail in their proposal how they will be included as a discrete group.

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<sup>13</sup> some of these producers may be bottling alcoholic drinks and paying Alcohol Duty on behalf of other producers

- 4.5. HMRC will share a sample for the research drawn from HMRC Alcohol Duty returns.
- 4.6. Of the 2,870 alcohol producers in the sample, HMRC has addresses for all records, telephone numbers for 37% and email addresses for 26%. The supplier will therefore have to match telephone numbers and/or email addresses from an external source for the remainder of the sample.
- 4.7. Whilst most alcohol producers are small and medium sized, the majority of alcohol is produced by a small number of high-volume producers. Suppliers shall detail in their proposals how they will engage and include a range of small, medium and large producers.
- 4.8. Suppliers shall detail in their bid how they will use the available sample and their corresponding recruitment strategy to fully deliver the research objectives. Outside of these groups of interest, the supplier shall detail how they will maximize the spread of interviews across alcohol type.
- 4.9. Suppliers may propose different sample sizes and participant groups with full justification if they feel these would better meet this study's aims and objectives.
- 4.10. We envisage interviews lasting between 45 and 60 minutes and taking place virtually, preferably through video calling but telephone interviews would also be acceptable where required. Suppliers shall provide details of this in their proposal.
- 4.11. Suppliers shall set out their approach to analyzing and quality assuring the data gathered from interviews.
- 4.12. In accordance with HMRC guidelines, individuals in Wales must be allowed to request an interview in Welsh. Suppliers must outline any additional costs associated with providing this service in their proposal.

## 5. Timetable

- 5.1. HMRC expects this study to run to the timings in the table below. Suppliers are required to demonstrate in their tenders that they will be able to complete the research to these dates or sooner, unless a revised timescale is agreed between the two parties during the project commissioning process.

<b>Activity</b>	<b>Date</b>
ITT issued	10/11/2025
Deadline for queries on ITT	10/11/2025 – 01/12/2025 – 5pm
HMRC response to ITT queries	21/11/2025 – 5pm
<b>Deadline for response to ITT</b>	08/12/2025 – 5pm
Contract awarded	16/02/2026
Set-up meeting	w/c 23/02/2026

Topic guide and recruitment screener development	w/c 23/02/2026
Recruitment & fieldwork	w/c 30/03/2026 - w/c 04/05/2026
Analysis	w/c 04/05/2026 - w/c 18/05/2026
Presentation of findings	w/c 22/06/2026
Final outputs signed off, project close	w/c 22/06/2026

5.2. The successful supplier shall attend a set-up meeting in the week commencing 23/02/2026.

All stages of the project must be completed by 22/06/2026. Tenderers must demonstrate that they can meet this deadline.

5.3. Project timelines and milestones will be agreed for the project commissioned under this contract. The Supplier shall deliver the milestone activity by the agreed timescales unless otherwise agreed by the two parties in writing.

## 6. Length of Contract

6.1. The contract term will be for 6 months with an optional extension period of 6 months.

## 7. Outputs

7.1. The supplier shall deliver the following outputs:

### Overarching Project Management, Planning and Updates

7.2. A detailed project plan outlining key dates and milestones, explaining how each research question corresponds to and will be answered by the methodology, clearly indicating any actions for HMRC and key points where meetings could be arranged with key HMRC stakeholders to discuss scoping, interim findings, emerging recommendations and next steps.

7.3. An initial set-up meeting to define the scope of the project and the planned approach with the appointed Supplier and HMRC stakeholders after the contract is awarded.

7.4. Weekly progress updates via email from the Supplier's project manager during the life of the project.

7.5. Weekly progress update calls between HMRC and Supplier.

### Qualitative Research Deliverables

7.6. Agreed approach for sampling for the qualitative research.

- 7.7. Agreed versions of the qualitative research materials including a recruitment screener, advance letter to potential participants, and discussion guides and any other materials needed to conduct interview
- 7.8. Five interview transcripts from a range of project stages
- 7.9. An analysis grid – outlining the themes that arise from the interviews
- 7.10. A sample of qualitative interview transcripts from the mainstage qualitative research.

## **Presentation and Reports of Findings**

- 7.11. Presentation of full findings to stakeholders, prepared through analysis of the qualitative results.
- 7.12. A draft copy of the structure of the presentation for HMRC to provide comments on to be delivered at least a week prior to the draft copy of the presentation slide deck.
- 7.13. A draft copy of the presentation slide deck for HMRC to provide comments on to be delivered at least two weeks prior to the presentation.
- 7.14. Presentation of methodology and final findings to HMRC to provide comments on ahead of the report drafting.
- 7.15. Draft copies of all key documents, such as topic guides, presentations, topline and final reports provided to HMRC. These are to be submitted in sufficient time to the HMRC project manager for comments to be incorporated and for our approval to be given for the final version. Specific deadlines will be agreed with the HMRC project manager.
- 7.16. All summaries and reports should be provided in an electronic format, compatible with Microsoft Office applications.
- 7.17. All reports should be concise (approximately 30 pages), written in plain English, follow the Gov.uk style guide, and follow HMRC's accessibility guidance (the HMRC project manager will supply guidance prior to preparation of any report). HMRC expects all drafts to be complete, to have been proof-read before delivery and for data in the drafts to have been quality assured. HMRC may arrange for any final reports produced to be peer-reviewed, either in-house or externally.

## 8. Quality and Risk Management

- 8.1. Suppliers shall include a quality control plan with their proposal, which must demonstrate their internal procedures to assure quality control. This must include details of their quality assurance processes at each stage of the project. In particular, this must include the following stages:
- Development of recruitment and fieldwork materials
  - Qualitative fieldwork stage
  - Analysis of qualitative results and
  - Production of outputs (i.e. presentation and report)
- 8.2. Suppliers shall include a project plan for the work that identifies the main tasks, dates these will be completed and key milestones that will be used to monitor progress, indicating clearly where HMRC is expected to contribute.
- 8.3. Proposals shall also include an assessment of the key risks to this project. This must identify the most significant risks to successful completion of the programme of work, assess the degree of risk (likelihood and impact), and set out strategies for minimising these risks and managing the consequences if problems occur. A risk register template is attached.

## 9. Expertise and Capability

- 9.1. HMRC acknowledges that considerable resources are required for the successful delivery of this project to time and to sufficiently high standards. It is possible that agencies invited to tender have the skills and ability within their organisation to undertake all or part of this research but do not have sufficient resources required to successfully deliver the whole research requirement. We therefore encourage agencies to collaborate with other suppliers if required and where relevant to ensure that they are fully capable of undertaking this work.
- 9.2. HMRC is seeking suppliers who can demonstrate that their proposed research delivery team has:
- a. Relevant qualifications/training/methodological specialisms
  - b. Experience engaging and recruiting business populations
  - c. Experience with qualitative research methods
  - d. Experience delivering the outputs specified in section 7
  - e. Experience researching business taxation
- 9.3. Proposals shall summarise the skills and expertise relevant to this requirement that members of staff bring to the team and clearly identify the project manager and individual project managers and include their CVs as an annex. Each CV must not exceed two pages.

9.4. The proposal shall also specify details of which parts (if any) of the project will be sub-contracted, the name of the sub-contractor who will work on the project, their experience of related research, and their responsibilities within the project. If it is proposed to sub-contract any of the work, the same details as those provided by the Supplier shall be given about the qualifications, experience and responsibilities of sub-contractor staff involved along with a description of their respective roles and the management arrangements put in place. Ultimately, the successful Supplier will be held to account for the performance of any sub-contractor and needs to demonstrate their confidence to successfully manage sub-contractors. This should also be considered for any joint submissions, as the second contractor will be treated as a sub-contractor.

## **10. Project Management and Contract Administration**

- 10.1. Lucy Eastlake is the HMRC manager for this project. They will be responsible for the day-to-day management of the contract. Once the contract has been awarded, all contact with HMRC concerning the project should be made through them. The research organisation will be required to appoint a contract manager who will act as the principal point of contact for the Department.
- 10.2. It is expected that the appointed Supplier will nominate project manager(s) to lead on the day-to-day management of the project. The Supplier's project manager must work closely with the HMRC project manager and through them, with internal customers within HMRC throughout the duration of the project. The HMRC project manager must be kept informed of progress and be involved in key decisions. Proposed changes in project staffing (at all levels) or deviations from the agreed work programme must be discussed and agreed with the project manager in advance. Michael Kelly is responsible for all decisions that involve funding.
- 10.3. In costing your tender you must allow for attendance at a minimum of six meetings in addition to weekly meetings to update HMRC on the progress of the project. Most meetings are expected to take place remotely, although some may take place at the research organisation's premises by arrangement. These might include the following:
  - a. Project set-up meeting.
  - b. A briefing to discuss the initial findings / ensure robustness of the research and
  - c. Presentation of key findings and final analysis.

## **11. Research Cost Model**

- 11.1. The maximum contract value will be £65,000 (excluding VAT).

- 11.2. HMRC reserves the right to not consider for award any tenders where the costings are in excess of £65,000.
- 11.3. The Supplier shall adhere to the costing assumptions outlined in the costing model.
- 11.4. Costs will be fixed throughout the duration of the contract.

# Order Schedule 23 (HMRC Terms)

## 1. Definitions

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

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

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

**“Prohibited Transaction”** a) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description otherwise payable by the Supplier or a Connected Company on or in connection with the Charges; or

b) which would be payable by any Key Subcontractor and its Connected Companies on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract,

other than transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business;

**“Purchase Order Number”** the Buyer's unique number relating to the supply of the Deliverables;

**“Supporting Documentation”** sufficient information in writing to enable the Buyer to reasonably verify the accuracy of any invoice; and

**“Tax Compliance Failure”** where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC's “Test for Tax Non-Compliance”, as set out in Annex 1 (as amended and updated from time to time), where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Paragraph 5.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor.

## **2. Exclusion of certain Core Terms and terms of Schedules**

2.1. When the Parties have entered into an Order Contract which incorporates the terms of this Order Schedule 23, the following Core Terms are modified in respect of that Order Contract (but are not modified in respect of the DPS Contract):

2.1.1. Clauses 31.1, 31.2, 31.3 and 31.4(d) of the Core Terms do not apply to that Order Contract, but for the avoidance of doubt, the remainder of Clause 31.4 of the Core Terms shall continue to apply to the Order Contract; and

2.1.2. Clause 7.2 of the Core Terms does not apply to that Order Contract.

2.2. When the Parties have entered into an Order Contract which incorporates the terms of this Order Schedule 23, the following Joint Schedules are modified in respect of that Order Contract (but are not disapplied in respect of the DPS Contract):

2.2.1. The definition of “Occasion of Tax Non-Compliance” contained in Joint Schedule 1 (Definitions) does not apply to that Order Contract; and

2.2.2. paragraph 5(d) of Joint Schedule 11 (Processing Data) does not apply to that Order Contract.

## **3. Charges, Payment and Recovery of Sums Due**

3.1. The Supplier shall invoice the Buyer as specified in Clause 4 of the Core Terms as modified by any DPS Special Terms or any Order Special Terms.

3.2. In addition to the provisions of Clause 4 of the Core Terms and any applicable DPS Special Term or Order Special Term, the Supplier shall procure a Purchase Order Number from the Buyer before any Deliverables are supplied. Should the Supplier supply Deliverables without a Purchase Order Number:

- 3.2.1. the Supplier does so at its own risk; and
- 3.2.2. the Buyer shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

3.3. The Supplier shall submit each invoice and any Supporting Documentation required in accordance with Clause 4 of the Core Terms and any applicable DPS Special Term or Order Special Term, as directed by the Buyer from time to time, either:

- 3.3.1. via the Buyer 's electronic transaction system as an Electronic Invoice; or
- 3.3.2. to **Lucy Eastlake** (or such other person notified to the Supplier in writing by the Buyer) by email in pdf format or, if agreed with the Buyer, in hard copy by post.

#### 4. Warranties

4.1. The Supplier represents and warrants that:

- 4.1.1. in the three years prior to the Effective Date, it has complied with all applicable Law related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 4.1.2. it has notified the Buyer in writing of any Tax Compliance Failure it is involved in; and
- 4.1.3. no proceedings or other steps have been taken (nor, to the best of the Supplier's knowledge, are threatened) for:
  - 4.1.3.1. the winding up of the Supplier;
  - 4.1.3.2. the Supplier's dissolution; or
  - 4.1.3.3. the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue,

and the Supplier has notified the Buyer of any profit warnings it has issued in the three years prior to the Effective Date.

4.2. If the Supplier becomes aware that any of the representations or warranties under Paragraphs 4.1.1, 4.1.2 and/or 4.1.3 have been breached, are untrue or misleading, it shall immediately notify the Buyer in sufficient detail to enable the Buyer to make an accurate assessment of the situation.

4.3. In the event that the warranty given by the Supplier in Paragraph 4.1.2 is materially untrue, this shall be deemed to be an event to which Clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Order Contract had been terminated under Clause 10.4.1.

## 5. Promoting Tax Compliance

5.1. The Supplier shall comply with all Law relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

5.2. The Supplier shall provide to the Buyer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to that person supplying any material Deliverables under the Order Contract.

5.3. Upon a request by the Buyer, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor of the Supplier engaged in supplying Deliverables under the Contract.

5.4. If, at any point during the Order Contract Period, there is a Tax Compliance Failure, the Supplier shall:

5.4.1. notify the Buyer in writing within five (5) Working Days of its occurrence; and

5.4.2. promptly provide to the Buyer:

5.4.2.1. details of the steps which the Supplier is taking to resolve the Tax Compliance Failure and to prevent it from recurring, together with any mitigating factors that it considers relevant; and

5.4.2.2. such other information in relation to the Tax Compliance Failure as the Buyer may reasonably require.

5.5. The Supplier shall indemnify the Buyer against any liability for Tax (including any interest, penalties or costs incurred) of the Buyer in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Order Contract.

5.6. Any amounts due under Paragraph 5.5 shall be paid not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Buyer. Any amounts due under Paragraph 5.5 shall not be subject to clause 11.2 of the Core Terms.

5.7. Upon the Buyer's request, the Supplier shall promptly provide information which demonstrates how the Supplier complies with its Tax obligations.

5.8. If the Supplier:

5.8.1. fails to comply with Paragraphs 5.1, 5.4.1 and/or 5.7 this may be a material breach of the Order Contract;

5.8.2. fails to comply with a reasonable request by the Buyer that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Paragraph 5.23 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in a Tax Compliance Failure this shall be a material breach of the Order Contract; and/or

5.8.3. fails to provide acceptable details of steps being taken and mitigating factors pursuant to Paragraph 5.4.2 this shall be a material breach of the Order Contract;

and any such material breach shall be deemed to be an event to which clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Order Contract had been terminated under Clause 10.4.1.

5.9. In addition to those circumstances listed in clause 15.2 to 15.4 of the Core Terms, the Buyer may internally share any information, including Confidential Information, which it receives under Paragraphs 5.2 to 5.4 (inclusive) and 5.7.

## 6. Use of Off-shore Tax Structures

6.1. The Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place any Prohibited Transactions, unless the Buyer otherwise agrees to that Prohibited Transaction.

6.2. The Supplier shall notify the Buyer in writing (with reasonable supporting detail) of any proposal for the Supplier, its Connected Companies, or a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall include reasonable supporting detail and make the notification within a reasonable time before the Prohibited Transaction is due to be put in place.

6.3. If a Prohibited Transaction is entered into in breach of Paragraph 6.1, or circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Buyer. The Parties shall agree (at no cost to the Buyer)

any necessary changes to any such arrangements by the undertakings concerned (and the Supplier shall ensure that the Key Subcontractor shall agree, where applicable). The matter will be resolved using clause 34 of the Core Terms if necessary.

6.4. Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Paragraphs 6.2 and 6.3 shall be deemed to be an event to which clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Contract had been terminated under Clause 10.4.1.

## 7. Data Protection and off-shoring

7.1. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Order Contract:

7.1.1. not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

7.1.1.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;

7.1.1.2. the Data Subject has enforceable rights and effective legal remedies;

7.1.1.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

7.1.1.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

7.2. Failure by the Processor to comply with the obligations set out in Paragraph 7.1 shall be deemed to be an event to which clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Order Contract had been terminated under Clause 10.4.1.

## 8. Commissioners for Revenue and Customs Act 2005 and related Legislation

8.1. The Supplier shall comply with, and shall ensure that all Supplier Staff who will have access to, or are provided with, Government Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 (“CRCA”) to maintain the confidentiality of Government

Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of those obligations may lead to a prosecution under Section 19 of CRCA.

- 8.2. The Supplier shall comply with, and shall ensure that all Supplier Staff who will have access to, or are provided with, Government Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of those obligations may lead to prosecution under those Acts.
- 8.3. The Supplier shall comply with, and shall ensure that all Supplier Staff who will have access to, or are provided with, Government Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Deliverables. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 8.4. The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Staff who will have access to, or are provided with, Government Data in writing of the obligations upon Supplier Staff set out in Paragraphs 8.1, 8.2 and 8.3. The Supplier shall monitor the compliance by Supplier Staff with such obligations.
- 8.5. The Supplier shall ensure that all Supplier Staff who will have access to, or are provided with, Government Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Buyer upon demand.
- 8.6. In the event that the Supplier or the Supplier Staff fail to comply with this Paragraph 8, the Buyer reserves the right to terminate the Order Contract as if that failure to comply were an event to which clause 10.4.1 of the Core Terms applies.

## Annex 1

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

#### Condition one (An in-scope entity or person)

1. There is a person or entity ("X") which is either:
  - (a) The Economic Operator or Essential Subcontractor ("EOS");
  - (b) Part of the same group of companies as EOS. An entity will be treated as within the same group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>14</sup>;
  - (c) Any director, shareholder or other person ("P") which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

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

2. X has been engaged in one or more of the following:
  - a. Fraudulent evasion<sup>15</sup>;
  - b. Conduct caught by the General Anti-Abuse Rule<sup>16</sup>;
  - c. Conduct caught by the Halifax Abuse principle<sup>17</sup>;
  - d. Entered into arrangements caught by a DOTAS or VADR scheme<sup>18</sup>;
  - e. Conduct caught by a recognised 'anti-avoidance rule'<sup>19</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
  - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>20</sup>;

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<sup>14</sup> <https://www.iasplus.com/en/standards/ifrs/ifrs10>

<sup>15</sup> 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>16</sup> "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

<sup>17</sup> "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

<sup>18</sup> A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

<sup>19</sup> The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>20</sup>

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

- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

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

- 3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:
  - (a) In respect of 2(a), either X:
    - (i) Has accepted the terms of an offer made under a Contractual Disclosure Facility ("CDF") pursuant to the Code of Practice 9 (COP9) procedure<sup>21</sup>; or,
    - (ii) Has been charged with an offence of fraudulent evasion.
  - (b) In respect of 2(b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB: Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
  - (c) In respect of 2(b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
  - (d) In respect of 2(f) this condition is satisfied without any further steps being taken.
  - (e) In respect of 2(g) the foreign equivalent to each of the corresponding steps set out above in 3(a) to (c).

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

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<sup>21</sup> The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

**Annex 2 Form**

**CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE: **SR2610949264** - 16/02.2026 ('the Agreement')

DECLARATION:

I solemnly declare that:

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

**Redacted**

