

North of England Commissioning Support Unit (NECS) (Hosted by NHS England)

- and -

MBI Health Limited

CONTRACT

for the provision Clinical Digital Health Solutions (CDHS) for the Integrated Health Economy Framework

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THIS CONTRACT is made

BETWEEN

- (1) **North of England Commissioning Support Unit (NECS) (Hosted by NHS England)** of **NECS, John Snow House, Durham, DH1 3YG** (the **Customer**); and
- (2) **MBI Health Limited** a company registered in United Kingdom under company number 08312821 and whose registered office is at 5th Floor Vivo Building, 30 Stamford Street, London, England, SE1 9LQ (the **Service Provider**).

WHEREAS

- a) Guy's and St Thomas' NHS Foundation Trust (the "**Authority**"), acting on behalf of the Customer, selected the Service Provider to the framework as a potential provider of **Data Quality Dashboard** services.
- b) The Service Provider undertook to provide services in accordance with the terms of the framework agreement dated 01 October 2024 (the "**Framework Agreement**").
- c) The Authority established the Framework Agreement in consultation with and for the benefit of the Customers (as defined in the Framework Agreement).
- d) The Customer made a direct award to the Service Provider to supply the Services in accordance with the terms of the Framework Agreement and this Call Off Contract.
- e) The Customer made a Direct Award for National Data Quality Dashboard.
- f) The Unique Reference Number (URN) for this Contract is **CDHS00038** and this must be used on all purchase orders and invoices.

IT IS AGREED AS FOLLOWS:

1. Key Provisions

1.1 Application of the key provisions:

- 1.1.1 The standard provisions that are not marked as optional shall apply to this Contract.
- 1.1.2 The optional provisions shall only apply to this Contract where they have been checked and information completed or relevant Schedules incorporated as applicable.
- 1.1.3 Extra provisions shall only apply to this Contract where such provisions are set out in Schedule 2-29 (Extra Call-off Terms and Conditions).

2. INTERPRETATIONS

2.1 As used in this Contract:

- 2.1.1 the terms and expressions set out in Schedule 2-1(Interpretations) shall have the meanings ascribed therein;
 - 2.1.2 the masculine includes the feminine and the neuter;
 - 2.1.3 the singular includes the plural and vice versa;
 - 2.1.4 the recitals shall form part of and be incorporated into this Contract; and
 - 2.1.5 the words "include", "includes", "including" "for example", "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation".
- 2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 2.3 A reference to any document other than as specified in Clause 2.2 shall be construed as a reference to the document as at the Effective Date.
- 2.4 A reference to a "**person**" includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality).
- 2.5 A reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Contract shall be binding on, and enure to the benefit of, the parties to this Contract and their respective successors, permitted assigns and permitted transferees.
- 2.6 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 2.7 References to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made.
- 2.8 Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 (Interpretations) shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

2.9 Without prejudice to Clause 5.2, in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:

2.9.1 the Clauses;

2.9.2 Schedule 2-1 (Interpretations);

2.9.3 Annex 1 of Schedule 2-2 (Service Specification);

2.9.4 the remaining Schedules (and any Annexures thereto including Annex 2 of Schedule 2-2 (Service Specification)) excluding Schedule 2-18 (Software and Software Licence Terms);

2.9.5 Schedule 2-18 (Software and Software Licence Terms); and

2.9.6 the applicable terms of the Framework Agreement.

3. THE SERVICES

3.1 This Contract and the applicable provisions of the Framework Agreement govern the overall relationship of the Service Provider and the Customer with respect to the provision of the Services.

3.2 Nothing in this Contract shall create an exclusive relationship between the Service Provider and the Customer for the provision of the Services.

3.3 The Customer appoints the Service Provider and the Service Provider agrees to provide the Services:

3.3.1 promptly and in any event within any time limits as may be set out in this Contract;

3.3.2 in accordance with all other provisions of this Contract;

3.3.3 with reasonable skill and care and in accordance with any Standards and Regulations as set out in this Contract;

3.3.4 in accordance with the Law (including any Guidance);

3.3.5 in accordance with Good Industry Practice;

3.3.6 in accordance with the Policies; and

3.3.7 in a professional and courteous manner.

3.4 In complying with its obligations under this Contract, the Service Provider shall, and shall procure that all Service Provider Personnel shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

3.5 The Service Provider shall provide the Services in accordance with the provisions of this Contract including:

3.5.1 the Service Specification;

3.5.2 the Service Provider Solution;

3.5.3 by adhering to any agreed timetable in any Implementation Plan, if incorporated, or Schedule 2-2 (Service Specification);

- 3.5.4 by ensuring that each Delivery Milestone is capable of being accepted by the Customer on or before its Milestone Date; and
- 3.5.5 the relevant Service Levels at all applicable times throughout the Term of this Contract.
- 3.6 Throughout the Term, the Service Provider shall:
 - 3.6.1 maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
 - 3.6.2 not make any significant changes to its system of quality processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
 - 3.6.3 provide all resources, Service Provider Equipment, Consumables and other items and facilities required to provide the Services, including those set out in the Service Specification;
 - 3.6.4 comply with all training obligations in accordance with its own operational procedures, Law, Policies, Good Industry Practice, the requirements of the Service Specification and any notices or instructions given to the Service Provider by the Customer and/or any competent body, as relevant to the provision of the Services and the Service Provider's access to the Customer Premises and Sites in accordance with this Contract;
 - 3.6.5 without prejudice to any specific notification requirements set out in this Contract, promptly notify the Customer of any health and safety hazard which has arisen, or the Service Provider is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
 - 3.6.6 ensure that any Service Provider Equipment complies with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Service Provider's risk and responsibility at all times;
 - 3.6.7 if an Occasion of Tax Non-Compliance occurs:
 - 3.6.7.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - 3.6.7.2 promptly provide to the Customer:
 - (a) details of the steps which the Service Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require;
 - 3.6.8 unless otherwise confirmed by the Customer in writing (to include, without limitation, as part of the Service Specification), ensure that any Goods purchased partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8) of Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods being purchased;

- ~~3.6.9~~ ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Customer's information and communications technology systems.
- 3.6.10 ensure that there is no slavery or human trafficking in its supply chains, notify the Customer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains and shall provide to the Customer any reports or other information that the Customer may reasonably request as evidence of the Service Provider's compliance with this Clause 3.6.10; and
- 3.6.11 fully and as soon as reasonably practicable respond to all reasonable requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any disputes at the frequency, in the timeframes and in the format as requested by the Customer from time to time (acting reasonably).
- 3.7 [Subject to Clause 42, any failure to meet any agreed timetable (including a failure to Achieve any Delivery Milestones by the applicable Milestone Date) and any of the Service Provider obligations under the Implementation Plan shall entitle the Customer to Liquidated Damages calculated in accordance with the provisions of Schedule 2-15 (Liquidated Damages).]
- 3.8 [Subject to Clause 42, a Performance Failure shall entitle the Customer to Service Credits calculated in accordance with the provisions of Schedule 2-3 (Performance Management).]
- 3.9 The Service Provider acknowledges the critical nature of the Services to the Customer's primary functions and therefore, without prejudice to any rights of the Customer or obligations to the Service Provider, should the Service Provider become aware it is in Default of any of its obligations to provide or perform the Services, the Service Provider shall, where such Default is capable of remedy, remedy the same as soon as is reasonably practicable.

Responsibility for Awards:

- 3.10 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and for this Contract and any other Contracts it may enter into pursuant to the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - 3.10.1 the conduct of any Customers in relation to the Framework Agreement or any Contract; or
 - 3.10.2 the performance or non-performance of any Contracts between the Service Provider and any Customer entered into pursuant to the Framework Agreement.

4. DUE DILIGENCE

- 4.1 The Service Provider acknowledges that, subject to the Allowable Assumptions, it has:
 - 4.1.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 4.1.2 raised all relevant due diligence questions with the Customer before the Effective Date; and
 - 4.1.3 entered into this Contract in reliance on its own due diligence alone.
- 4.2 Where there is an Operating Environment:
 - 4.2.1 the Service Provider acknowledges that it has inspected the Operating Environment

and has advised the Customer of any aspect of the Operating Environment that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of this Contract; and

- 4.2.2 if the Service Provider has either failed to inspect the Operating Environment or failed to notify the Customer of any required remedial actions in accordance with Clause 4.2 then the Service Provider shall not be entitled to recover any additional costs or Charges from the Customer relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Customer Premises.

The onus shall be on the Service Provider to prove to the Customer that any work to the Customer Premises is required in respect of a latent structural defect and that the additional costs or Charges are reasonable and necessary. The Service Provider shall not incur such additional costs or Charges without obtaining the Customer's prior written consent.

- 4.3 The Service Provider shall not be excused from the performance of any of its obligations under this Contract (nor shall it be entitled to recover any additional costs or increase the Charges) as a result of any misinterpretation of the Customer's requirements under this Contract. Any Allowable Assumptions that the Service Provider has made as to the manner in which it will provide the Services shall be limited to those explicitly set out and identified as such in Annex 3 of Schedule 2-4 (Charges and Invoicing) and the parties shall comply with the provisions of paragraph 8 of Schedule 2-4 (Charges and Invoicing) in relation to the verification of any Allowable Assumptions.
- 4.4 Any disputes relating to due diligence shall be resolved in accordance with Clause 20.

5. STANDARDS AND REGULATIONS

- 5.1 The Service Provider shall provide the Services and meet its responsibilities and obligations hereunder materially in accordance with the Standards and Regulations (as set out in Schedule 2-13 (Standards and Regulations)).
- 5.2 The Service Provider shall promptly discuss with the Customer and the relevant authority that issued the applicable Standards and Regulations, any conflict that the Service Provider reasonably believes, at any time:
- 5.2.1 it has or may have with any of the Standards and Regulations; and
- 5.2.2 there is or may be between any of the Standards and Regulations and any other obligation under this Contract,

and shall comply with the Customer's decision on the resolution of that conflict, which the Customer shall make: i) acting reasonably; and ii) taking into consideration the relevant authority's opinion on the conflict.

6. CHARGES

- 6.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

7. CONTRACT MANAGEMENT AND REPORTING

- 7.1 The Service Provider and the Customer shall comply with their respective contract management obligations set out in Schedule 2-7 (Contract, Service Management and Reporting).

8. AMENDMENTS

- 8.1 No amendment to the provisions of this Contract, other than a variation of any Sub-Contractors

in accordance with Clause 32.3, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-8 (Contract Change Procedure).

- 8.2 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

8.2.1 a General Change in Law; or

8.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

- 8.3 If a Specific Change in Law occurs or will occur during the Term (other than Specific Changes in Law as referred to in Clause 8.2.2), the Service Provider shall:

8.3.1 notify the Customer as soon as reasonably practicable of the likely effects of that change, including:

8.3.1.1 whether any change is required to the Services, the Charges or this Contract; and

8.3.1.2 whether any relief from compliance with the Service Provider's obligations is required, including any obligation to Achieve a Delivery Milestone and/or to meet the Service Levels; and

8.3.2 provide the Customer with evidence:

8.3.2.1 that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

8.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and

8.3.2.3 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.

- 8.4 Any variation in the Charges or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than Specific Changes in Law as referred to in Clause 8.2.2) shall be implemented in accordance with the Contract Change Procedure.

9. COMMUNICATIONS

- 9.1 A notice shall be deemed to be properly served if sent in writing and by hand, first class post or email, correctly addressed in accordance with Clause 9.2 (as applicable) and:

9.1.1 if sent by hand, when delivered at the relevant address during Working Hours and, if delivered at any other time, at 9:00 am on the next Working Day;

9.1.2 if sent by first class post, two (2) Working Days after posting; and

9.1.3 if sent by email during Working Hours, at the time of delivery, provided a delivery receipt notice has been requested at the time of sending and a failure notice is not received, and if delivered at any other time, at 9:00 am on the next Working Day.

- 9.2 Notices must be sent to each party at the address or email address set out below:

For the Customer:

Name: [REDACTED] Strategic Head of Data & Analytics.

Address: NECS, John Snow House, Durham, DH1 3YG

Email Address: [REDACTED]

For the Service Provider:

Name: [REDACTED] - Partner

Address: 5th Floor, Vivo Building, 30 Stamford Street, London, SE1 9LQ

Email Address: [REDACTED]

9.3 Notwithstanding the foregoing, any written notice sent by a party that is actually received by a manager or administrator at the other party shall be deemed to have been properly given and received by that party irrespective of whether or not the delivery requirements of this Clause 9 have been complied with.

9.4 This Clause 9 does not apply to the service of legal proceedings or any documents in any legal action, mediation or arbitration, wherein the rules for such service shall be set by the court or mediation or arbitration institute, as applicable.

10. TERM AND TERMINATION

10.1 This Contract shall take effect on the Effective Date and shall expire on 31/03/2026 (the “**Initial Term**”), unless either:

10.1.1 terminated earlier by operation of Law or pursuant to the terms of the Contract;

10.1.2 the Customer elects to extend the Contract from either the end of the Initial Term (the “**Extension Period**”) or the end of an Extension Period (provided that the Term of the Contract shall not exceed ten (10) years in total) by giving the Service Provider no less than **30 Working Days’** notice before the expiry date of the current term; or

10.1.3 the Customer issues a Termination Assistance Notice in accordance with paragraph 6.1 of Schedule 2-12 (Exit and Transfer Arrangements), in which case this Contract shall expire at the end of the Termination Assistance Period (howsoever arising).

Termination for cause by the Customer

10.2 The Customer may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, and the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it, in the following circumstances:

10.2.1 if the Service Provider is in material Default of this Contract, provided that the material Default is capable of remedy, the Customer may only terminate this Contract under this Clause 10.2.1 if the Service Provider has failed to remedy such material Default within thirty (30) Days of receipt of a notice from the Customer requiring the Service Provider to do so;

10.2.2 a Service Provider Termination Event has occurred;

10.2.3 a Financial Distress Termination Event has occurred; or

10.2.4 if there is an Insolvency Event of the Service Provider;

10.2.5 if there is an Occasion of Non-Tax Compliance.

10.3 If the Customer, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Service Provider and/or any Key Sub-Contractor of the Service Provider when compared to any information provided to and/or assessed by the Customer as part of any procurement process or other due diligence leading to the award of this Contract to the Service Provider or the entering into a sub-contract by the Service Provider, without prejudice to any of the Customer's other rights under this Contract, the following process shall apply:

10.3.1 the Customer may (but shall not be obliged to) give notice to the Service Provider requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Customer may require within a reasonable time period as specified in such notice; and

10.3.2 a failure or refusal by the Service Provider to provide the financial or other security and/or assurances requested in accordance with Clause 10.3 and in accordance with any reasonable timescales specified in any such notice issued by the Customer shall be deemed a breach of a material obligation of this Contract by the Service Provider.

10.4 In order that the Customer may act reasonably in exercising its discretion in accordance with Clause 10.3, the Service Provider shall provide the Customer with such reasonable and proportionate up-to-date financial or other information relating to the Service Provider or any relevant third party entity upon request.

10.5 The Customer may terminate this Contract by issuing a Notice to terminate to the Service Provider where:

10.5.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;

10.5.2 the Customer has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

10.5.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or

10.5.4 there has been a failure by the Service Provider and/or one its Sub-Contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Service Provider's Sub-Contractors, the Customer may request the replacement of such Sub-Contractor and the Service Provider shall comply with such request as an alternative to the Customer terminating this Contract under this Clause 10.5.4.

10.6 If the Customer novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Customer to terminate this Contract in accordance with Clause 10.5.2 to Clause 10.5.4 shall be deemed mutual termination rights and the Service Provider may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Customer if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Customer.

Termination for cause by the Service Provider

10.7 The Service Provider may, by issuing a Termination Notice to the Customer, terminate this Contract if the Customer fails to pay an undisputed sum due to the Service Provider under this Contract which in aggregate exceeds **£21,449.00** and such amount remains outstanding for

forty (40) Working Days after the receipt by the Customer of a notice of non-payment from the Service Provider. This Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

- 10.8 For the avoidance of doubt, the Service Provider shall not be entitled to suspend the supply of the Services where it is in dispute with the Customer and shall instead follow the procedure set out in Clause 20.

Termination for convenience by the Customer

- 10.9 The Customer may terminate this Contract forthwith in writing to the Service Provider at any time on two (2) months' written notice.
- 10.10 Should the Customer terminate this Contract in accordance with Clause 10.9, then the Customer shall pay to the Service Provider the termination sum calculated in accordance with Schedule 2-28 (Payments on Termination) (the "**Termination Payment**").
- 10.11 Subject to Clause 10.10, the Service Provider shall not be entitled to any payment from the Customer after the termination (howsoever arising) or expiry of this Contract.

Partial termination by the Customer

- 10.12 Where the Customer has the right to terminate this Contract (except under Clause 10.9), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.
- 10.13 If the Customer notifies the Service Provider pursuant to Clause 10.12 that it intends to terminate this Contract in part and Customer believes acting reasonably that the effect of such partial termination is to render the remaining Services incapable of being provided in accordance with this Contract, then the Customer shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Service Provider within one (1) month of issuing the Termination Notice pursuant to Clause 10.12, with such termination taking effect from the date of service of such notice, or a later date specified in such notice.
- 10.14 The parties shall agree the effect of any change necessitated by a partial termination in accordance with the Contract Change Procedure, including the effect the partial termination may have on any other Services and the Charges, provided that:
- 10.14.1 the Service Provider shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the partial termination arises due to the occurrence of a Supplier Termination Event;
- 10.14.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Pricing Schedule and must be reasonable; and
- 10.14.3 the Supplier shall not be entitled to reject the change.
- 10.15 The termination (howsoever arising) or expiry of this Contract pursuant to this Clause 10 shall be without prejudice to any rights of the Customer or the Service Provider that may have accrued before the date of such termination or expiry.

11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the Service Provider shall continue to provide the Services until the date of expiry or termination (howsoever arising) of this Contract (or any part thereof) or such other date as required under this Clause 11 and the provisions of Schedule 2-12 (Exit and Service Transfer Arrangements).

- 11.2 The Customer shall require the Service Provider to destroy or return the following within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract:
- 11.2.1 subject to paragraph 2.4.5 of Schedule 2-22 (Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects), any data (including (if any) Customer Data) and Customer Confidential Information in the Service Provider’s possession, power or control, (and shall, at the request of the Customer, certify that it does not retain any such Customer Confidential Information) either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Service Provider’s pre-agreed and reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that the Service Provider may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract or such period as is necessary for such compliance;
 - 11.2.2 all Goods owned by the Customer and all Customer Furnished Items in the Service Provider’s or any third party’s (including Sub-Contractors) possession and/or control; and
 - 11.2.3 any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising).
- 11.3 The Customer shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract (or until the date on which the Service Provider fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data or information arising from the Services from the Service Provider retained by the Service Provider pursuant to Clause 11.2.1.
- 11.4 The provisions of:
- 11.4.1 Clauses 6 (CHARGES) , 10 (TERM AND TERMINATION), 11(CONSEQUENCES OF TERMINATION AND EXPIRY), 12 (WARRANTIES), 13 (DEALING WITH CLAIMS), 14 (LIMITATION OF LIABILITY), 15 (CHARGES), 17 (CONFIDENTIALITY), 18(FREEDOM OF INFORMATION), 19(PUBLICITY), 20 (DISPUTE RESOLUTION), 24(INSURANCE), 25 (RECOVERY OF SUMS DUE), 26 (STATUTORY REQUIREMENTS), 27 (SEVERABILITY), 29 (BRIBERY AND PROHIBITED ACTS), 39 (LAW AND JURISDICTION), 45 (EXIT PLAN), 53 (CUSTOMER DATA AND DATA PROTECTION), 56 (INTELLECTUAL PROPERTY RIGHTS, INDEMNITY)
 - 11.4.2 Schedules 2-1 (Interpretation), 2-10 (Dispute Resolution Procedure), 2-12 (Exit and Service Transfer Arrangements) and 2-22 (Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects); and
 - 11.4.3 any other Clause or Schedule of this Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry,
- shall survive the termination (howsoever arising) or expiry of this Contract.

12. WARRANTIES

- 12.1 Each party warrants that:
- 12.1.1 it has full capacity and authority to enter into and to perform each Contract;
 - 12.1.2 this Contract is executed by its authorised representative;
 - 12.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

- 12.2 The Service Provider further warrants that:
- 12.2.1 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;
 - 12.2.2 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;
 - 12.2.3 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
 - 12.2.4 it is not impacted by an Insolvency Event;
 - 12.2.5 all statements made and documents submitted by the Service Provider as part of the procurement of the Services are and remain true and accurate at the Effective Date;
 - 12.2.6 all information included within the Service Provider's responses to any documents issued by the Customer as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Service Specification and Tender) and all accompanying materials is accurate;
 - 12.2.7 it has the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 12.2.8 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 12.3 The warranties in Clause 12.1 are repeated each time the Service Provider provides deliverables under the Contract.
- 12.4 The Service Provider indemnifies the Customer against non-payment by the Service Provider of any tax or National Insurance.
- 12.5 All claims indemnified under this Contract must be conducted in accordance with Clause 13.
- 12.6 If the Service Provider becomes aware of a warranty that becomes untrue or misleading, it must immediately notify the Customer.
- 12.7 All third party warranties and indemnities covering the Services and Goods provided pursuant to the Contract must be assigned for the Customer's benefit by the Service Provider.
- 12.8 The Service Provider has reviewed any intended use of the Services specified in Schedule 2-2 (Service Specification). The Service Provider represents and warrants that:
- 12.8.1 the Services are provided materially as described in Schedule 2-2 (Service Specification) and will continue to be provided accordingly following any updates to the Services;
 - 12.8.2 if any of the Services amount to a medical device for the purposes Medical Devices Laws:
 - 12.8.2.1 the Service Provider holds and shall continue to hold all approvals and certificates necessary to enable the Services to be placed on the market or put into service in the United Kingdom as a medical device; and
 - 12.8.2.2 the Services will at all times comply with all Medical Devices Laws; and

- 12.8.3 the Services incorporate encryption technology of commercially reasonable and appropriate standards, consistent with such intended use and any other use which is intended by the Service Provider.
- 12.9 For clarity, the Service Provider confirms that:
- 12.9.1 the Services will comply with Medical Devices Laws when used in accordance with any intended use of the Services specified in Schedule 2-2 (Service Specification); and
- 12.9.2 the intended use of the Services described in Schedule 2-2 (Service Specification) is within the scope of the intended use for which the Services are authorised as a medical device.
- 12.10 The Service Provider will provide the Customer with evidence of its compliance with Clauses 12.7 and 12.8 as and when requested by the Customer.
- 12.11 Except as expressly stated in this Contract, all warranties, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law
- 13. DEALING WITH CLAIMS**
- 13.1 The provisions of this Clause 13 shall be subject to any provisions of applicable Law or Guidance or directions of any applicable Regulatory Body which are contrary to procedures identified below.
- 13.2 If the Beneficiary receives any notice of any Claim for which it appears that it is, or may become, entitled to indemnification under this Contract, the Beneficiary shall give notice of the same in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt.
- 13.3 Subject to Clauses 13.8 and 13.9, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Clause 13.9, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 13.4 With respect to any Claim conducted by the Indemnifier pursuant to Clause 13.3:
- 13.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- 13.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- 13.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- 13.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 13.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- 13.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with

Clause 13.3;

13.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

13.5.3 the Indemnifier fails to comply in any material respect with the provisions of Clause 13.4.

Recovery of sums

13.6 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

13.6.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

13.6.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

Mitigation

13.7 Each of the Customer and the Service Provider shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this Contract.

Sensitive Claims

☐ (only applicable to the Contract if this box is checked)

13.8 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

13.9 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Clause 13.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

14. LIMITATION OF LIABILITY

14.1 Subject to Clauses 14.5, 14.6 and 14.7:

14.1.1 the Service Provider's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer Data or any other data) that is caused by a Default of the Service Provider occurring in each and any Contract Year shall in no event exceed £1 million;

- 14.1.2 the Service Provider's aggregate liability in respect of loss of or damage to Customer Data or losses incurred by the Customer that is caused by a Default of the Service Provider occurring in each and any Contract Year shall in no event exceed £1 million;
- 14.1.3 the Service Provider's aggregate liability in respect of all other losses incurred by the Customer under or in connection with this Contract as a result of a Default by the Service Provider shall in no event exceed:
- 14.1.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to 125% of the Charges paid and/or due to be paid in the first Contract Year;
- 14.1.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 125% of the Charges paid and/or due to be paid to the Service Provider under this Contract in the twelve (12) months immediately preceding the occurrence of the Default; and
- 14.1.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to 125% of the Charges paid and/or due to be paid to the Service Provider in the twelve (12) month period immediately prior to the last day of the Term,
- provided that where any losses referred to this Clause 14.1.3 have been incurred by the Customer as a result of the Service Provider's abandonment of this Contract or the Service Provider's Wilful Default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 125% shall be deemed to be references to 200%.
- 14.2 Subject to Clause 14.1 but notwithstanding Clause 14.5, the Service Provider acknowledges and agrees that the Customer may, without limitation, recover from the Service Provider the following losses to the extent that they arise as a result of a Default by the Service Provider:
- 14.2.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- 14.2.2 any wasted expenditure or Charges paid by the Customer;
- 14.2.3 the additional cost of procuring replacement services for the remainder of the Term and/or replacement deliverables, which shall include any incremental costs associated with replacement services and/or replacement deliverables above those which would have been payable under this Contract;
- 14.2.4 any compensation or interest paid to a third party by the Customer;
- 14.2.5 any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty; and
- 14.2.6 any anticipated savings.
- 14.3 Subject to Clauses 14.4, 14.5, 14.6 and 14.8 and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment, the Customer's aggregate liability in respect of all losses incurred by the Service Provider under or in connection with this Contract as a result of Defaults of the Customer shall in no event exceed:
- 14.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Charges due to be paid and/or due to be paid in the first Contract Year;
- 14.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid in the twelve (12) months immediately preceding the occurrence of the Default; and

- 14.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid in the twelve (12) month period immediately prior to the last day of the Term.
- 14.4 The Customer's total aggregate liability for any Termination Payment shall in no event exceed:
- 14.4.1 in relation to the Unrecovered Payment, the amount set out in paragraph 3 of Schedule 2-28 (Payments on Termination);
- 14.4.2 in relation to the Breakage Costs Payment, the amount set out in paragraph 2.2 of Schedule 2-28 (Payments on Termination); and
- 14.4.3 in relation to the Compensation Payment, the amount set out in paragraph 5.3 of Schedule 2-28 (Payments on Termination).
- 14.5 Subject to Clauses 14.6, 14.7 and 14.8, neither party shall be liable to the other for:
- 14.5.1 any indirect, special or consequential losses; or
- 14.5.2 loss of profits, turnover, revenue, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 14.6 Neither party limits or excludes any of the following:
- 14.6.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
- 14.6.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
- 14.6.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 14.6.4 any liability that cannot be excluded or limited by Law.
- 14.7 The Service Provider does not limit or exclude its liability for any indemnity given under:
- 14.7.1 Clauses 12.4 (Tax and National Insurance), 26.3.3 (Statutory Requirements), 46.7.4 (Goods), 56 (Intellectual Property Rights) and 57 (Employment and TUPE); and
- 14.7.2 Schedules 2-4 (Charges and Invoicing), 2-20 (Staffing) and 2-21 (Employment and TUPE) of this Contract.
- 14.8 The Customer does not limit or exclude its liability for any indemnity given under Schedule 2-21 (Employment and TUPE) of this Contract.
- 14.9 Each party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with this Contract (including any such loss or damage arising under or in connection with an indemnity).
- 14.10 Without prejudice to any other rights or remedies that the Customer may have, the Service Provider acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Service Provider of any of the provisions of this Contract. Accordingly, the Service Provider acknowledges that the Customer shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and that no proof of special damages shall be necessary for the enforcement of such remedies.

15. CHARGES

- 15.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

16. CONTRACT MANAGEMENT, GOVERNANCE AND COOPERATION

- 16.1 The Service Provider and the Customer shall comply with their respective contract management and governance obligations, including those set out in Schedule 2-7 (Contract, Service Management and Reporting) and Schedule 2-27 (Governance).

17. CONFIDENTIALITY

- 17.1 Except to the extent set out in this Clause 17 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

17.1.1 treat the other party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials; and

17.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 17.2 Clause 17.1 shall not apply to the extent that:

17.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 18;

17.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

17.2.3 such information was obtained from a third party without obligation of confidentiality;

17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

17.2.5 it is independently developed without access to the other party's Confidential Information.

- 17.3 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider Personnel are aware of and shall comply with these obligations as to confidentiality.

- 17.4 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the Customer Confidential Information received otherwise than for the purposes of this Contract.

- 17.5 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who need to know the information, and shall ensure that such Service Provider Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any Default, act or omission of any Service Provider Personnel causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases.

- 17.6 To the fullest extent permitted by its own obligations of confidentiality to any Service Provider

Personnel, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Service Provider is taking appropriate steps to comply with this Clause 17, including copies of any written communications to and/or from Service Provider Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Service Provider Personnel in connection with obligations as to confidentiality.

17.7 At the written request of the Customer, the Service Provider shall procure that those members of the Service Provider Personnel who have access to patient identifiable data sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

17.8 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider Confidential Information in relation to the use or provision of the Services:

17.8.1 on a confidential basis to any Crown Body for any proper purpose of the Customer or of the relevant Crown Body;

17.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

17.8.3 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

17.8.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 17.8.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

17.8.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights pursuant to Clause 35, its step-in rights pursuant to Clause 44 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 22 (Remedial Adviser) and exit management pursuant to Clause 11; or

17.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract pursuant to Clause 32,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 17.

17.9 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to Clause 17.8 is made aware of the Customer's obligations of confidentiality and bound by similar obligations of confidentiality with respect to such Confidential Information.

17.10 Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

17.11 Without prejudice to any Confidential Information, the Customer and the Service Provider acknowledge that any Confidential Information originating from:

17.11.1 the Customer, its employees, servants or agents is the property of the Customer; and

17.11.2 the Service Provider, its servants, agents or the Service Provider Personnel is the property of the Service Provider.

- 17.12 Subject to Clause 14.1, the Service Provider shall indemnify and keep the Customer indemnified at all times from and against all losses sustained by the Customer in the event of any breach by the Service Provider of this Clause 17.

18. FREEDOM OF INFORMATION

- 18.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations, including as set out in this Clause 18.
- 18.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 18.2.1 transfer to the Customer all Requests for Information that it receives as soon as reasonably possible and in any event within two (2) Working Days of receiving a Request for Information;
 - 18.2.2 provide the Customer with a copy of all relevant Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.
- 18.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA. The parties however agree that the Contract as a whole is not confidential in itself. The Service Provider therefore gives its consent for the Customer to publish this Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 18.3.1 The Customer shall consult with the Service Provider to inform its decisions regarding any redactions but the Customer shall have the final decision in its absolute discretion.
 - 18.3.2 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.
- 18.4 In no event shall the Service Provider respond directly to a Request for Information under this Contract unless expressly authorised to do so by the Customer.
- 18.5 The Service Provider acknowledges that (notwithstanding the provisions of this Clause 18) the Customer may be obliged under the FOIA to disclose information concerning the Service Provider or the Services:
- 18.5.1 in certain circumstances without consulting the Service Provider; or
 - 18.5.2 following consultation with the Service Provider and having taken their views into account,
- provided always that where Clause 18.5.1 applies the Customer shall, in accordance with any recommendations of the Freedom of Information Code of Practice (the "**Code**"), take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 18.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as reasonably requested from time to time.

- 18.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in Schedule 2-11 (Commercially Sensitive Information) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 18.5.

19. PUBLICITY

- 19.1 The Service Provider shall not, without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed:
- 19.1.1 make any press announcements, discuss with any third parties or publicise this Contract or its contents in any way; or
- 19.1.2 use the Customer's name or brand in any promotion or marketing, without the Customer's prior written consent.
- 19.2 The Service Provider shall ensure the observance of the provisions of this Clause 19 by all Service Provider Personnel.
- 19.3 If the Service Provider receives any requests from the media or otherwise regarding this Contract (or its contents) or any related issues, it will refer all such requests to the Customer.
- 19.4 The Customer shall be entitled to make any press announcements or publicise this Contract in accordance with any legal obligation upon the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 19.5 The Service Provider acknowledges to the Customer that nothing in this Contract either expressly or by implication constitutes an endorsement by the Customer of any goods and/or services of the Service Provider (including the Services) and the Service Provider agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

20. DISPUTE RESOLUTION

- 20.1 Subject to the provisions of Clause 20.2 and save for disputes arising under Clause 29 (which shall be dealt with in accordance with Clause 29) any dispute between the parties arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 20, and neither the Customer nor the Service Provider shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the Courts in connection with any such dispute, until the procedures set out in this Clause 20 have been exhausted and unless agreed otherwise, the parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the dispute.
- 20.2 Clause 20.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the Customer or the Service Provider from applying for injunctive relief in the case of:
- 20.2.1 breach or threatened breach of confidentiality;
- 20.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
- 20.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Customer or the Service Provider to liability.
- 20.3 All disputes between the Customer and the Service Provider arising out of or relating to this Contract shall first be referred by [REDACTED] or [REDACTED] to the other for resolution.
- 20.4 If any dispute cannot be resolved by the representatives nominated under Clause 20.3 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.3, that dispute shall then be referred to **Richard Mcleod** and **John Bull** for resolution.

- 20.5 If any dispute cannot be resolved by the representatives nominated under Clause 20.4 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.4, that dispute shall:
- 20.5.1 first be further referred to mediation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); and thereafter:
- 20.5.1.1 if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); or
- 20.5.1.2 if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure),
- save that if the Customer determines that the dispute is a Multi-Party Dispute before the dispute is referred to arbitration, either following a Service Provider Request or at its discretion, the dispute shall be referred to the Multi-Party Dispute Resolution Procedure.
- 20.6 The Service Provider shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
- 20.6.1 the existence of any unresolved disputes; and/or
- 20.6.2 any failure by the Customer to pay any Charges,
- unless the Service Provider is entitled to terminate this Contract under Clause 10.7 for failure to pay undisputed Charges.

21. REMEDIATION PLAN PROCESS

- 21.1 Subject to Clause 42, in the event that:
- 21.1.1 there is, or is reasonably likely to be, a delay in:
- 21.1.1.1 the Achievement of a Delivery Milestone by its Milestone Date; and/or
- 21.1.1.2 a delay in the design, development, testing or implementation of a deliverable by the relevant date set out in the Implementation Plan;
- 21.1.2 in any Service Period there has been a Material Performance Failure (and for these purposes a Material Performance Failure may be a single Material Performance Failure or a number of Performance Failures or repeated Performance Failures (whether of the same or different Service Levels and regardless of whether such Performance Failures are remedied) which taken together constitute a Material Performance Failure); and/or
- 21.1.3 the Service Provider commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),
- (each a “**Notifiable Default**”), the Service Provider shall notify the Customer of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Remediation Plan Failure or other Service Provider Termination Event, the Customer may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Remediation Plan Process.

Notification

21.2 If:

21.2.1 the Service Provider notifies the Customer pursuant to Clause 21.1 that a Notifiable Default has occurred; or

21.2.2 the Customer notifies the Service Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Service Provider has to rectify),

then, unless the Notifiable Default also constitutes a Service Provider Termination Event and the Customer serves a Termination Notice, the Service Provider shall comply with the Remediation Plan Process.

21.3 The “**Remediation Plan Process**” shall be as set out in this Clause 21.

Submission of the draft Remediation Plan

21.4 The Service Provider shall submit a draft Remediation Plan to the Customer for the Customer to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the parties) after the original notification pursuant to Clause 21.2 (Notification). The Service Provider shall submit a draft Remediation Plan even if the Service Provider disputes that it is responsible for the Default.

21.5 The draft Remediation Plan shall set out:

21.5.1 full details of the Default that has occurred, including a root cause analysis;

21.5.2 the actual and anticipated effects of the Default; and

21.5.3 the steps which the Service Provider proposes: i) to take to rectify the Default (if applicable); and ii) to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

21.6 The Service Provider shall promptly provide to the Customer any further documentation that the Customer reasonably requires to assess the Service Provider's root cause analysis. If the parties do not agree on the root cause set out in the draft Remediation Plan, either party may refer the matter to be determined by an expert in accordance with Clause 20 and Schedule 2-10 (Dispute Resolution Procedure).

Agreement of the Remediation Plan

21.7 The Customer may reject the draft Remediation Plan by notice to the Service Provider if, acting reasonably, it considers that the draft Remediation Plan is inadequate, for example because the draft Remediation Plan:

21.7.1 is insufficiently detailed to be capable of proper evaluation;

21.7.2 will take too long to implement and/or complete the steps referred to in Clause 21.5.3;

21.7.3 will not prevent reoccurrence of the Default; and/or

21.7.4 will rectify the Default but in a manner which is not acceptable to the Customer.

21.8 The Customer shall notify the Service Provider whether it approves the draft Remediation Plan as soon as reasonably practicable. If the Customer rejects the draft Remediation Plan, the Customer shall give reasons for its decision and the Service Provider shall take the reasons

into account in the preparation of a revised Remediation Plan. The Service Provider shall submit the revised draft of the revised Remediation Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the parties) of the Customer's notice rejecting the first draft.

21.9 If the Customer approves the Remediation Plan:

21.9.1 the Service Provider shall immediately start work on the actions set out in the Remediation Plan; and

21.9.2 the Customer may no longer terminate this Contract in whole or in part on the grounds of the relevant Default;

save in the event of a Remediation Plan Failure or other right for the Customer to terminate under this Contract.

22. REMEDIAL ADVISOR

22.1 Subject to Clause 42, if:

22.1.1 any of the Intervention Trigger Events occur; or

22.1.2 the Customer reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Customer may give notice to the Service Provider (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

22.1.3 a meeting between the Customer's representative and the Service Provider's representative to discuss the Intervention Cause; and/or

22.1.4 the appointment as soon as practicable by the Service Provider of a Remedial Adviser, as further described in Clause 22.2.

For the avoidance of doubt, but subject to Clause 22.2.3, if the Intervention Cause also gives rise to a right for the Customer to terminate this Contract, the Customer shall have no obligation to exercise its rights under this Clause 22.1 prior to or instead of exercising its right to terminate this Contract.

22.2 If the Customer issues an Intervention Notice:

22.2.1 the "**Remedial Adviser**" shall be:

22.2.1.1 a person selected by the Service Provider and approved by the Customer; or

22.2.1.2 if none of the persons selected by the Service Provider have been approved by the Customer (or no person has been selected by the Service Provider) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Customer;

22.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Customer; and

22.2.3 any right of the Customer to terminate this Contract pursuant to Clause 10 (Term and Termination) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the parties) (the "**Intervention Period**").

22.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Service Provider's responsibilities under this Contract), the parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- 22.3.1 observe the conduct of, and work alongside, the Service Provider Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- 22.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- 22.3.3 write reports and provide information to the Customer in connection with the steps being taken by the Service Provider to remedy the Intervention Cause;
- 22.3.4 make recommendations to the Customer and/or the Service Provider as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- 22.3.5 take any other steps that the Customer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

22.4 The Service Provider shall:

- 22.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- 22.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the assets and rights used by the Service Provider to provide the Services in accordance with this Contract;
- 22.4.3 submit to such monitoring as the Customer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- 22.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Customer within the timescales given by the Remedial Adviser; and
- 22.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Customer (such consent not to be unreasonably withheld).

22.5 The Service Provider shall be responsible for:

- 22.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
- 22.5.2 its own costs in connection with any action required by the Customer and/or the Remedial Adviser pursuant to this Clause 22.

22.6 If:

22.6.1 the Service Provider:

- 22.6.1.1 fails to perform any of the steps required by the Customer in an Intervention Notice; and/or
- 22.6.1.2 is in Default of any of its obligations under Clause 22.4; and/or

22.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Customer shall be entitled to terminate this Contract pursuant to Clause 10.2.2 (Term and Termination).

23. REFERENCE CUSTOMER

☐ (only applicable to the Contract if this box is checked)

- 23.1 From the Effective Date, save to the extent it would be a breach of confidence to do so, the Service Provider shall notify the Customer of at least one (1) Reference Bids in each Contract Year.
- 23.2 Where the Customer consents in writing to be listed as a reference customer, the Service Provider shall use the Customer as a reference customer in relation to that Reference Bid. If, following the Customer giving its consent, the Service Provider decides to not submit that Reference Bid, it shall not be counted as the Reference Bids referred to in Clause 23.1.
- 23.3 In respect of any Reference Bid that the Service Provider submits, the Service Provider may provide its potential customers with a general description of the Services, geographical coverage and the contact details of the Customer’s authorised contact but the Service Provider shall not disclose any commercially sensitive information relating to this Contract or any Confidential Information of the Customer.
- 23.4 If the Service Provider fails to meet its obligations under this Clause 23, the Customer shall escalate the matter to the Service Management Board and, at the Customer’s option, the Service Provider’s representatives on the Service Management Board shall attend a separate meeting, within ten (10) Working Days of the Customer’s request to do so, with the Customer at the Customer’s offices, unless otherwise agreed by the parties, to explain in detail why the Customer has not been used as a reference customer.

24. INSURANCE

- 24.1 During the Term and for a period of six (6) years following expiry or termination (howsoever arising) of this Contract, the Service Provider shall take out and maintain or procure the maintenance of the minimum insurances set out in Schedule 2-19 (Insurances).
- 24.2 The Service Provider shall produce to the Customer’s first point of contact, within five (5) Working Days of request, brokers letters for all insurance policies referred to in Clause 24.1 or such other evidence as agreed between the Customer and the Service Provider that will confirm the extent of the cover given by those policies.
- 24.3 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract. It shall be the responsibility of the Service Provider to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities under this Contract.
- 24.4 The Service Provider shall ensure that the terms of any of the minimum insurance policies set out in Schedule 2-19 (Insurances) contain a waiver of the applicable insurer’s rights of subrogation against the Customer.

25. RECOVERY OF SUMS DUE

- 25.1 The Customer shall be permitted to deduct and withhold from any sum due to the Service Provider under this Contract any sum of money due from the Service Provider under:
- 25.1.1 this Contract; or
- 25.1.2 any other agreement between the Service Provider and the Customer,

provided that the terms of such other agreement provide for sums of money due from the Service Provider under that agreement to be recovered by way of a deduction from sums of money due to the Service Provider under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

26. STATUTORY REQUIREMENTS

- 26.1 The Service Provider shall notify the Customer of all statutory provisions and approved safety standards applicable to the Services and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.
- 26.2 The Service Provider shall, and shall use all reasonable endeavours to ensure that its Sub-Contractors and the Service Provider Personnel, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws relating to health and safety, which may apply to those involved in the performance of this Contract.
- 26.3 Where the Service Provider is required by Medical Devices Laws to undertake a regulatory action, such as a recall, field safety notice or field safety corrective action, ("**Regulatory Requirement**") in respect of the Services, the Service Provider shall:
- 26.3.1 promptly (taking into consideration the potential impact of the continued use of the Services on patients and the Customer) notify the Customer in writing of the Regulatory Requirement together with the circumstances giving rise to the Regulatory Requirement;
- 26.3.2 consult with the Customer as to the most efficient method of executing the Regulatory Requirement in respect of the Services and use its best endeavours to minimise the impact on the Customer and patients of the Regulatory Requirement; and
- 26.3.3 indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Customer as a result of such Regulatory Requirement.

27. SEVERABILITY

- 27.1 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Contract be held to be void or otherwise unenforceable by a court of competent jurisdiction from whose decision no appeal is made within the applicable time limit, then the provision, to the extent it is deemed to be void or unenforceable, shall be omitted and the remainder of the provisions of this Contract shall continue in full force and effect.

28. DISCRIMINATION AND EQUALITY

- 28.1 The Service Provider shall not, and shall use all reasonable endeavour to ensure that the Service Provider Personnel and Sub-Contractors do not, unlawfully discriminate within the meaning and scope of all applicable equality Law and must follow all applicable equality Law when they perform their obligations under the Contract, including:
- 28.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- 28.1.2 any other requirements and instructions which the Customer reasonably imposes related to equality Law.
- 28.2 The Service Provider must take all necessary steps, and inform the Customer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

29. BRIBERY AND PROHIBITED ACTS

29.1 The Service Provider warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

29.1.1.1 offered, given or agreed to give any officer or employee of the Customer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Customer or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Customer; or

29.1.1.2 in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Customer; and

29.1.1.3 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 The Service Provider shall during the Term of this Contract:

29.2.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

29.2.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that associated persons of the Service Provider do not commit tax evasion facilitation offences as defined under the Criminal Finance Act 2017;

29.2.3 keep appropriate records of its compliance with its obligations under Clause 29.2.1 and make such records available to the Customer on request; and

29.2.4 take account of any Guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

29.3 If the Service Provider or the Service Provider Personnel (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Customer:

29.3.1 the Customer shall be entitled:

29.3.1.1 to terminate this Contract with immediate effect and recover from the Service Provider the amount of any loss resulting from the termination;

29.3.1.2 to recover from the Service Provider the amount or value of any gift, consideration or commission concerned; and

29.3.1.3 to recover from the Service Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.3.2 any termination under Clause 29.3.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Customer; and

29.3.3 any Dispute relating to:

29.3.3.1 the interpretation of this Clause 29; or

29.3.3.2 the amount or value of any gift, consideration or commission,

shall be determined by the Customer, acting reasonably, and the decision shall be final and conclusive.

30. CORPORATE SOCIAL RESPONSIBILITY

☐ (only applicable to the Contract if this box is checked)

30.1 The Service Provider acknowledges that the Customer may have additional requirements in relation to corporate social responsibility. The Customer expects that the Service Provider and its Sub-Contractors will comply with such corporate social responsibility requirements as the Customer (acting reasonably) may notify to the Service Provider from time to time.

31. 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.

31.1 The Service Provider:

31.1.1 shall not use, nor allow its Sub-Contractors to use, forced, bonded or involuntary prison labour;

31.1.2 shall not require any Service Provider Personnel to lodge deposits or identify papers with the employer and shall be free to leave their employer after reasonable notice;

31.1.3 warrants and represents that it has not been convicted of any slavery or human tracking offenses anywhere around the world;

31.1.4 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 tracking offenses anywhere around the world;

31.1.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human tracking offenses anywhere around the world;

31.1.6 shall have and maintain throughout the Term of this 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;

31.1.7 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;

31.1.8 shall, on request, provide information published by the Service Provider on 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;

31.1.9 shall not use, nor allow its employees or Sub-Contractors 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 Sub-Contractors;

31.1.10 shall not use or allow child or slave labour to be used by its Sub-Contractors; and

31.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to Customer and Modern Slavery Helpline.

32. TRANSFER AND SUB-CONTRACTING

- 32.1 This Contract is personal to the Service Provider. Subject to the provisions of Clause 32.2, the Service Provider shall not assign, novate or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the Customer.
- 32.2 Notwithstanding Clause 32.1, the Service Provider shall, in accordance with the terms of this Contract, be entitled to sub-contract its obligations hereunder, however this shall not affect the Service Provider's obligations to the Customer and any liabilities under this Contract.
- 32.3 In selecting, appointing and managing Sub-Contractors, the Service Provider shall comply with the procedures specified in paragraph 3 of Schedule 2-9 (Sub-Contractors).
- 32.4 The Service Provider may not appoint any new Sub-Contractor in connection with this Contract or remove any Key Sub-Contractor until the Customer has confirmed in writing its agreement to such addition or removal. Subject to Clause 32.7, the Contract Change Procedure shall not apply to the addition of any new Sub-Contractors or removal of any Key Sub-Contractors unless stated otherwise by the Customer. The Service Provider may replace Sub-Contractors that are not Key Sub-Contractors at its discretion provided that:
- 32.4.1 such replacement Sub-Contractor is appointed in accordance with the terms of this Contract; and
 - 32.4.2 there is no disruption to the provision of the Services.
- 32.5 In the event that the Service Provider wishes to add any new Sub-Contractors or remove any Key Sub-Contractor, the Service Provider shall notify the Customer's Contract Manager in writing of such proposed addition to or removal. In the case of additions of new Sub-Contractors, such notification will contain confirmation that the selection and appointment of the Sub-Contractor is in accordance with the provisions of paragraph 3 of Schedule 2-9 (Sub-Contractors). In the case of removal from the list of Key Sub-Contractors, such notification will contain information on how the Service Provider proposes to ensure continuity in the provision of the Services.
- 32.6 The Customer reserves the right to veto the appointment or withdraw the approval of the use of any Sub-Contractor in the provision of the Services, and to object to the removal of any Key Sub-Contractor. Such right shall not be exercised unreasonably, frivolously or vexatiously.
- 32.7 In the event that the Customer exercises any of its rights pursuant to Clause 32.6, the Service Provider shall use all reasonable endeavours to maintain the provision of the Services and the Customer and the Service Provider shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract. Any resulting change to the Contract following such negotiations shall be agreed via the Contract Change Procedure.
- 32.8 The use of Sub-Contractors and any subsequent approval of other Sub-Contractors by the Customer under this Clause 32 shall not in any way constitute any form of recommendation by the Customer of the Sub-Contractor, whether implied or otherwise.
- 32.9 Subject to the provisions of Clause 32.11, the Customer shall be entitled to:
- 32.9.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
 - 32.9.2 novate this Contract and any associated third party licences to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer. If this transfer increases the burden of the Service Provider's obligations under this Contract the Service Provider

shall be entitled to any additional Charges that are reasonable which can be agreed through the Contract Change Procedure.

32.10 Subject to the provisions of Clause 32.11, any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.

32.11 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 32.9.2, or if a successor body which is not a Contracting Authority becomes the Customer pursuant to Clause 32.10 (in the remainder of this Clause 32.11 both such bodies are referred to as the Transferee):

32.11.1 the Service Provider shall have a right to terminate the Contract with immediate effect in the event of the bankruptcy or insolvency of the Transferee;

32.11.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider; and

32.11.3 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the Customer and the Service Provider in accordance with Clause 8:

Clause 17.8.1 references to "Crown Body" shall be deleted and in Schedule 2-1, delete the definition of "Crown Body".

32.12 Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

32.13 The Customer shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the Service Provider.

33. RIGHTS OF THIRD PARTIES

33.1 To the extent that this Contract expressly confers rights or benefits on a party who is not a party to this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, that party shall be entitled to enforce those rights as if it was a party to this Contract. The consent of any person other than the Customer (or the Service Provider, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause 33.1.

33.2 Except as provided in Clause 33.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 33.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

33.3 This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.

34. ACCESS TO CUSTOMER PREMISES

34.1 Any Customer Premises (including temporary buildings) made available to the Service Provider, its Sub-Contractors and the Service Provider Personnel by the Customer in connection with this Contract shall be made available free of charge solely for the purpose of performing this Contract. The Service Provider shall have the use of the Customer Premises as licensee and shall vacate the same upon the expiry or termination (howsoever arising) of this Contract.

34.2 The Customer shall be responsible for maintaining the internal and external structure of the

Customer Premises and the security of the Customer Premises in accordance with its security procedures. The Service Provider shall comply with all health and safety and reasonable security requirements of the Customer while on the Customer Premises and shall procure that all of its Sub-Contractors and the Service Provider Personnel shall likewise comply with such requirements. The Customer shall provide the Service Provider with copies of its security procedures upon request and shall afford the Service Provider an opportunity to inspect its physical security arrangements.

- 34.3 The Service Provider shall notify the Customer as soon as practicable of any health and safety hazards at the Customer Premises of which it becomes aware. The Service Provider will draw these hazards to the attention of the Service Provider Personnel and will instruct those persons in connection with any necessary associated safety measures.
- 34.4 The Customer may refuse admission to any Customer Premises and/or direct the Service Provider to end the involvement in the provision of the Services of any of the Service Provider Personnel whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final.

35. AUDIT

[DN: the scope of the audit provisions should be updated to reflect the complexity of the Services under each Contract and the Customer's requirements for oversight of the same. The Customer may not require all of the records below if they are not required to monitor the performance of the Services.]

- 35.1 The Service Provider shall keep and maintain for seven (7) years after the Contract has been completed, or as long a period as may be otherwise agreed between the parties, full and accurate records relating to the provision of the Services and the Contract, including:
- 35.1.1 this Contract, its Schedules and all amendments to such documents;
 - 35.1.2 all other documents which this Contract expressly requires to be prepared;
 - 35.1.3 all operation and maintenance manuals prepared by the Service Provider for the purpose of the provision of the Services and the underlying Service Provider System and Service Provider Equipment;
 - 35.1.4 documents prepared by the Service Provider or received by the Service Provider from a third party relating to a Force Majeure Event;
 - 35.1.5 all formal notices, reports or submissions made by the Service Provider to the Customer in connection with the provision of the Services;
 - 35.1.6 all certificates, licences, registrations or warranties in each case obtained by the Service Provider in relation to the provision of the Services;
 - 35.1.7 documents submitted by the Service Provider pursuant to the Contract Change Procedure;
 - 35.1.8 documents submitted by the Service Provider pursuant to invocation by it or the Customer of the dispute resolution procedure set out in Schedule 2-10;
 - 35.1.9 all expenditure reimbursed by the Customer;
 - 35.1.10 all payments made by the Customer;
 - 35.1.11 invoices and records related to VAT sought to be recovered by the Service Provider;

- 35.1.12 financial records, including audited and un-audited accounts of the Service Provider;
- 35.1.13 records required to be retained by the Service Provider by Law, including in relation to health and safety matters and health and safety files and all consents;
- 35.1.14 all documents relating to the insurances to be maintained under this Contract and any claims made in respect of them; and
- 35.1.15 all other records, notices or certificates required to be produced and/or maintained by the Service Provider pursuant to this Contract.
- 35.2 During the Term and for a period of eighteen (18) months thereafter, the Service Provider shall allow the Customer to access (or procure access for the Customer), and any auditors of or other advisers to the Customer, any of the Sites, the Service Provider System, Service Provider Personnel and records (and those of the Service Provider's Parent Companies and/or Key Sub-Contractors as may be reasonably required) in order to:
 - 35.2.1 fulfil any legally enforceable request by any Regulatory Body;
 - 35.2.2 check the accuracy of the Charges or identify suspected fraud;
 - 35.2.3 to verify the Service Provider's and any Key Sub-Contractors' compliance with this Contract and applicable Law;
 - 35.2.4 for any other lawful or required purpose; and
 - 35.2.5 audit and take copies of records as necessary to verify the Service Provider's compliance with the terms and conditions of this Contract.
- 35.3 Except where an audit is imposed on the Customer by a Regulatory Body, the Law or where the Customer has reasonable grounds for believing that the Service Provider has acted fraudulently or otherwise not complied with its obligations under this Contract, the Customer may not conduct an audit of the Service Provider or of the same Key Sub-Contractor more than twice in any Year.
- 35.4 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 35 unless the audit identifies a material default by the Service Provider, in which case the Service Provider shall reimburse the Customer for all its reasonable costs incurred in the course of the audit.
- 35.5 If an audit identifies that:
 - 35.5.1 the Service Provider is failing to comply with any of its obligations under this Contract then, without prejudice to the other rights and remedies of the Customer, the Service Provider shall take the necessary steps to comply with its obligations at no additional cost to the Customer;
 - 35.5.2 the Customer has overpaid any Charges, the Service Provider shall pay to the Customer the amount overpaid within ten (10) Working Days from the date of receipt of an invoice or notice to do so; and
 - 35.5.3 the Customer has underpaid any Charges, the Customer shall pay to the Service Provider the amount of the under-payment within ten (10) Working Days from the date of receipt of an invoice or notice to do so.
- 35.6 The Customer may increase the extent to which it monitors the conduct of the Services if the Service Provider fails to fulfil any of its obligations under this Contract. The Customer shall give the Service Provider prior notification of its intention to increase the level of its monitoring. The Service Provider shall cooperate and provide the Customer with all reasonable assistance and information that the Customer reasonably requests to permit such increased monitoring and

the Service Provider shall bear its own costs in complying with the same.

36. FORCE MAJEURE

- 36.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Contract by giving 10 Days' written notice to the Affected Party.

37. LEGISLATIVE CHANGE

- 37.1 The Service Provider shall bear the cost of ensuring that the Services comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by a reasonably diligent service provider similar to the Service Provider as at the Effective Date.
- 37.2 Where such reasonably unforeseeable amendments are necessary, the Customer and the Service Provider shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the Service Provider for such additional costs as are both reasonably and necessarily incurred by the Service Provider in its provision of the Services.

38. WAIVER AND CUMULATIVE REMEDIES

- 38.1 The failure of the Service Provider or the Customer to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 38.2 A waiver of any Default shall not constitute a waiver of any other Default. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 38.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 9.
- 38.4 The rights and remedies provided by this Contract are cumulative and, unless a right or remedy of the Customer is expressed to be an exclusive right or remedy, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies provided at law or in equity or otherwise under this Contract.

39. LAW AND JURISDICTION

- 39.1 English law shall govern this Contract, including its formation, validity, construction, performance and any non-contractual causes of action arising out of or in connection with this Contract. The parties submit irrevocably to the exclusive jurisdiction of the English Courts in relation to any dispute arising out of or in connection with this Contract.
- 39.2 CLAUSE REMOVED - NOT RELEVANT
- 39.3 This Contract shall be binding upon the Customer and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

40. ENTIRE AGREEMENT

- 40.1 This Contract, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the Customer and the Service Provider relating

to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

- 40.2 The parties acknowledge that the solution developed in accordance with the Service Provider Solution may have corresponding terms of use which may, amongst other things, set out the purposes for which the solution may be used (which may be presented to End Users on downloading or otherwise accessing the application) (the “**Solution TOU**”). To the extent of any conflict or inconsistency between this Contract and the Solution TOU, the terms of this Contract shall prevail. This Clause 40.2 shall apply regardless of any statement to the contrary in the Solution TOU.
- 40.3 Each of the parties acknowledge and agree that in entering into this Contract and the documents referred to in it and attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 40.4 Nothing in this Clause 40 shall operate to exclude any liability for fraud or fraudulent misrepresentation.

41. RELATIONSHIP OF THE PARTIES

- 41.1 Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

42. CUSTOMER RESPONSIBILITIES

- 42.1 The Customer’s Responsibilities are set out in Schedule 2-24 (Customer Responsibilities).

Customer Cause

- 42.2 Notwithstanding any other provision of this Contract, if the Service Provider has failed to:

42.2.1 Achieve a Delivery Milestone by its Milestone Date;

42.2.2 provide the Services in accordance with the Service Levels; and/or

42.2.3 comply with its obligations under this Contract,

(each a “**Service Provider Non-Performance**”), and the Service Provider can demonstrate that the Service Provider Non-Performance would not have occurred but for a Customer Cause, then (subject to the Service Provider fulfilling its obligations in this Clause 42):

42.2.3.1 the Service Provider shall not be treated as being in breach of this Contract to the extent the Service Provider can demonstrate that the Service Provider Non-Performance was caused by the Customer Cause;

42.2.3.2 the Customer shall not be entitled to exercise any rights that may arise as a result of that Service Provider Non-Performance:

(A) to terminate this Contract pursuant to Clauses 10.2.1; or

(B) to take action pursuant to Clauses 22 (Remedial Advisor) or 44 (Step-In Rights);

42.2.3.3 where the Service Provider Non-Performance constitutes the failure to Achieve a Delivery Milestone by its Milestone Date:

- (A) the Milestone Date shall be postponed by a period equal to the period of the delay that the Service Provider can demonstrate would not have occurred but for the Customer Cause;
- (B) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates that would not have been necessary but for such delay;
- (C) if the Delivery Milestone is listed in paragraph 2.2 of Schedule 2-15 (Liquidated Damages) as a Delivery Milestone for which, in the event of a delay to the agreed Milestone Date for the Achievement of a Delivery Milestone, the Customer would be entitled to recover Liquidated Damages, the Service Provider shall have no liability to pay such Liquidated Damages associated with that Delivery Milestone to the extent that the Service Provider can demonstrate that such failure would not have occurred but for the Customer Cause; and
- (D) the Service Provider shall be entitled to claim compensation subject to and in accordance with the principles set out in paragraph 9 of Schedule 2-4 (Charges and Invoicing); and/or

42.2.3.4 where the Service Provider Non-Performance constitutes a Performance Failure:

- (A) the Service Provider shall not be liable to accrue Service Credits;
- (B) the Service Provider shall be entitled to invoice for the Charges for the relevant Services affected by the Customer Cause,

in each case, to the extent that the Service Provider can demonstrate that the Performance Failure would not have occurred but for the Customer Cause.

42.3 In order to claim any of the rights and/or relief referred to in this Clause 42, the Service Provider shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Customer Cause has caused, or is reasonably likely to cause, a Service Provider Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:

42.3.1 the Service Provider Non-Performance (or likely Service Provider Non-Performance);

42.3.2 the Customer Cause and its effect, or likely effect, on the Service Provider’s ability to meet its obligations under this Contract;

42.3.3 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and

42.3.4 the relief and/or compensation claimed (or that would be claimed) by the Service Provider.

42.4 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Service Provider Non-Performance and the alleged Customer Cause and whether it agrees with the Service Provider’s assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief and/or compensation, consulting with the Service Provider where necessary.

42.5 The Service Provider shall consult with the Customer and use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Customer Cause, including any losses that the Service Provider may incur and the duration and consequences of any delay or

anticipated delay.

42.6 Without prejudice to Clause 20.6, if a dispute arises as to:

42.6.1 whether a Service Provider Non-Performance would not have occurred but for an Customer Cause; and/or

42.6.2 the nature and/or extent of the relief and/or compensation claimed by the Service Provider,

either party may refer the dispute to the Dispute Resolution Procedure and pending the resolution of the dispute, both parties shall continue to resolve the causes of, and mitigate the effects of, the Service Provider Non-Performance.

42.7 Any change that is required to the Implementation Plan or to the Charges pursuant to this Clause 42 shall be implemented in accordance with the Contract Change Procedure.

43. GUARANTEE

☐ (only applicable to the Contract if this box is checked)

43.1 Promptly following the execution of this Contract, the Service Provider shall, if it has not already delivered an executed deed of guarantee to the Customer, deliver the executed deed of guarantee to the Customer as required by the procurement process followed by the Customer. Failure to comply with this Clause shall be an irremediable breach of this Contract.

44. STEP-IN RIGHTS

☐ (only applicable to the Contract if this box is checked)

44.1 Subject to Clause 42, on the occurrence of a Step-In Trigger Event, the Customer may serve notice on the Service Provider (a "**Step-In Notice**") that it will be taking action under this Clause 44 (Step-in Rights), either itself or with the assistance of a third party (provided that the Service Provider may require any third parties to comply with a confidentiality undertaking equivalent to Clause 17 (Confidentiality) and such third party is not a direct competitor of the Service Provider). The Step-In Notice shall set out the following:

- (a) the action the Customer wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- (b) the Step-In Trigger Event that has occurred and whether the Customer believes that the Required Action is due to the Service Provider's Default;
- (c) the date on which the Customer intends for the Required Action to commence;
- (d) the time period which the Customer believes will be necessary to complete the Required Action;
- (e) whether the Customer will require access to the Service Provider's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Customer anticipates the Required Action will have on the Service Provider's obligations to provide the Services during the period that the Required Action is being taken.

44.2 Following service of a Step-In Notice, the Customer shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information in the form of a Step-Out Notice, and otherwise as it sees fit whilst undertaking the Required Action, to the Service Provider;
- (c) co-operate wherever reasonable with the Service Provider in order to enable the Service Provider to continue to provide the Services in relation to which the Customer is not assuming control; and
- (d) act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Customer's rights under this Clause 44.

44.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- (b) no Deductions shall be applicable in relation to Charges, but only in respect of Services that are the subject of the Required Action; and
- (c) subject to Clause 44.4, the Customer shall pay to the Service Provider the Charges after subtracting any applicable Deductions for Services that are not the subject of the Required Action and the Customer's costs of taking the Required Action.

44.4 If the Service Provider demonstrates to the reasonable satisfaction of the Customer that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the failure to Achieve a Delivery Milestone,

beyond that which would have been the case had the Customer not taken the Required Action, then the Service Provider shall be entitled to an agreed adjustment of the Charges.

44.5 Before ceasing to exercise its step in rights under this Clause 44, the Customer shall deliver a written notice to the Service Provider (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Customer plans to end the Required Action (the "**Step-Out Date**") subject to the Customer being satisfied with the Service Provider's ability to resume the provision of the Services and the Service Provider's plan developed in accordance with Clause 44.6.

44.6 The Service Provider shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Customer's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services shall satisfy the requirements of this Contract.

44.7 If the Customer does not approve the draft Step-Out Plan, the Customer shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the

Customer for the Customer's approval. This process shall be repeated until the draft Step-Out Plan is in a form that is acceptable to the Customer, who shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

- 44.8 The Service Provider shall bear its own costs in connection with any step-in by the Customer under this Clause 44, provided that the Customer shall reimburse the Service Provider's reasonable additional expenses incurred directly as a result of any step-in action taken by the Customer under:

- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (b) limbs (c) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of the Service Provider's Default).

45. EXIT PLAN

- 45.1 The Service Provider shall comply with its obligations set out in Schedule 2-12 (Exit and Service Transfer Arrangements), including by preparing and keeping updated during the Term an Exit Plan as specified, in Schedule 2-12 (Exit and Service Transfer Arrangements).

46. GOODS

☐ (only applicable to the Contract if this box is checked)

- 46.1 The Service Provider shall not replace any parts or components of the Goods used for the provision of the Services with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by a Customer or a Replacement Service Provider, prior to the expiry or termination (howsoever arising) of this Contract.
- 46.2 Where there is fault in any Goods which cannot be repaired, the Service Provider shall ensure and procure that any data (including Customer Data) residing in any Goods is removed prior to such Goods being returned to any manufacturer or other third party for disposal.
- 46.3 The Service Provider hereby grants the Customer, its agents and employees an irrevocable licence at any time (on reasonable notice, escorted by Service Provider Personnel and in Working Hours) to enter any Service Provider premises or Sites where any Goods owned by the Customer and/or Customer Furnished Items are kept to inspect and/or remove them.
- 46.4 The Service Provider shall store such Goods and Customer Furnished Items separately from all other goods of the Service Provider or any third party and in such a way that they remain readily identifiable as the Customer's property.
- 46.5 The Service Provider shall ensure and procure that it obtains equivalent rights of inspection and removal where any Goods owned by the Customer and/or Customer Furnished Items are kept at third party (including any Sub-Contractor) premises and that such Goods and Customer Furnished Items are kept separately from all other goods of that third party and in such a way that they remain readily identifiable as the Customer's property.
- 46.6 If the Customer determines in its sole discretion that any of the termination events specified in Clause 10 have occurred or are likely to occur, the Customer may, following reasonable notice, either itself or via its agent, during Working Hours and escorted by Service Provider Personnel enter any premises of the Service Provider or any third party (including any Sub-Contractor) where Goods owned by the Customer and/or Customer Furnished Items are kept to remove such Goods and/or Customer Furnished Items.
- 46.7 Delivery of Goods
- 46.7.1 The Service Provider shall deliver the Goods and provide the Goods at the location(s)

at the time(s) and date(s) and to the Customer's delivery requirements as specified to the Service Provider.

46.7.2 The point of delivery of the Goods shall be when an authorised agent of the Customer gives written acknowledgement that the Goods have been removed from the transporting vehicle and deposited at the Customer's delivery address.

46.7.3 Delivery shall include the unloading, stacking and/or installation of the Goods by the Service Provider Personnel, Sub-Contractors, suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct, and they shall at all times comply with the reasonable requirements of the Customer's security procedures.

46.7.4 Access to the Customer Premises and any labour and equipment that may be provided by the Customer in connection with delivery of the Goods shall be provided without acceptance by the Customer of any liability whatsoever and the Service Provider shall indemnify the Customer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Service Provider Personnel, Sub-Contractors, suppliers or carriers.

46.7.5 The Customer shall be under no obligation to accept or pay for any Goods delivered until the date of delivery, unless otherwise agreed by the parties.

46.8 Acceptance

46.8.1 The Acceptance Procedures for the Goods are set out in Schedule 2-6 (Acceptance Procedures).

46.9 Title and Risk

46.9.1 The ownership and passing of title and risk from one party to another is specified in Schedule 2-14 (Title and Risk).

47. FINANCIAL DISTRESS

☐ (only applicable to the Contract if this box is checked)

47.1 The Service Provider shall comply with the financial distress provisions set out on Schedule 2-25 (Financial Distress).

48. PROVISION OF CONSUMABLES

☐ (only applicable to the Contract if this box is checked)

48.1 The Service Provider shall supply all Consumables required for the performance of the Services and the operation of the Service Provider Equipment during the Term in accordance with the relevant provisions of the Service Specification.

48.2 The Service Provider shall deliver the Consumables in accordance with any delivery timescales, delivery dates, and delivery instructions (including the delivery location and delivery times) set out in the Service Specification or as otherwise agreed by the Customer in writing. Except where installation of the Consumables forms part of the Services, delivery shall be completed when the Consumables have been unloaded at the relevant Customer Premises and such delivery has been received by a duly authorised agent, employee or representative of the Customer. The Customer shall procure that such duly authorised agent, employee or representative of the Customer is at the Customer Premises at the agreed delivery date and times in order to accept such delivery. Where the installation of the Consumables forms part of

the Services, delivery shall be completed when such Consumables have been installed at the Customer Premises in accordance with any requirements set out in the Service Specification.

- 48.3 Part deliveries of Consumables and/or deliveries of Consumables outside of the agreed delivery times/dates may be rejected unless the Customer has previously agreed in writing to accept such deliveries.
- 48.4 Unless otherwise set out in the Service Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Consumables to the Customer Premises and unloading of the Consumables at the Customer Premises. Unless otherwise stated in the Service Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for obtaining all export and import licences for the Consumables and for any delays to the delivery time due to such licences not being available when required. In the case that any Consumables are supplied from outside the United Kingdom, the Service Provider shall ensure that accurate information is provided to the Customer as to the country of origin of the Consumables and shall be liable to the Customer for any additional duties or taxes for which the Customer may be accountable should the country of origin prove to be different from that advised by the Service Provider.
- 48.5 All third party carriers engaged to deliver the Consumables shall at no time be an agent of the Customer and accordingly the Service Provider shall be liable to the Customer for the acts and omissions of all third party carriers engaged to deliver the Consumables to the Customer.
- 48.6 Unless otherwise set out in the Service Specification, risk in the Consumables shall pass to the Customer when the Consumables are delivered as specified in this Contract and ownership of the Consumables shall pass to the Customer on delivery (as specified in this Contract), payment or part payment, whichever is the first to occur.
- 48.7 Consumables found to be damaged or otherwise not in accordance with the requirements of this Contract may be rejected by the Customer by written notice to the Service Provider within a reasonable period of time of the Customer becoming aware that the Consumables were damaged or otherwise not in accordance with this Contract ("**Rejected Consumables**"). Unless otherwise set out in the Service Specification, the Service Provider shall collect the Rejected Consumables at the Service Provider's risk and expense within five (5) Working Days of issue of written notice from the Customer rejecting the Consumables and, without additional charge, promptly (and in any event within five (5) Working Days or such other time agreed by the parties in writing acting reasonably) supply replacements for the Rejected Consumables to the Customer. Unless otherwise set out in the Service Specification, risk and title in respect of any Rejected Consumables shall pass to the Service Provider on the earlier of: (i) their collection by the Service Provider in accordance with this Clause 48.7; or (ii) the latest date such Rejected Consumables should have been collected by the Service Provider in accordance with this Clause 48.7. The whole of any delivery may be rejected if a reasonable sample of the Consumables taken indiscriminately from that delivery is found not to conform in any material respects to the requirements of the Contract.

49. ACCEPTANCE TESTS

☐ (only applicable to the Contract if this box is checked)

[DN: This box should be checked if the Customer wants to conduct any Acceptance Tests on the Services, Delivery Milestones or the deliverables for the initial implementation or any future implementations.]

- 49.1 The Service Provider shall comply with the Acceptance Procedures for the Services as set out in Schedule 2-6 (Acceptance Procedure).

50. PACKAGING, IDENTIFICATION AND END OF USE

☐ (only applicable to the Contract if this box is checked)

- 50.1 The Service Provider shall comply with all obligations imposed on it by Law relevant to the Service Provider Equipment and Consumables in relation to packaging, identification, and obligations following end of use by the Customer.
- 50.2 Unless otherwise specified in the Service Specification or otherwise agreed with the Customer in writing, the Consumables shall be securely packed in trade packages of a type normally used by the Service Provider for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 50.3 Unless otherwise: (a) specified in the Service Specification; and (b) agreed with the Customer in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package of Consumables:
- 50.3.1 a description of the Consumables which shall include, without limitation, the weight of the Consumables where available and any order number allocated to the Consumables by the Customer and/or the Service Provider;
- 50.3.2 the quantity in the package where available;
- 50.3.3 any special directions for storage;
- 50.3.4 the expiry date of the contents where applicable;
- 50.3.5 the batch number; and
- 50.3.6 the name and address of the manufacturer of the Consumables and the Service Provider.
- 50.4 All Services, Service Provider Equipment and Consumables that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Service Provider shall label all Service Provider Equipment and Consumables provided to the Customer, and the packaging of such Service Provider Equipment and Consumables, to highlight environmental and safety information as required by applicable Law.
- 50.5 Unless otherwise set out in the Service Specification or agreed with the Customer in writing, the Service Provider shall collect without charge any returnable containers (including pallets) within twenty one (21) Days of the date of the relevant delivery. Empty containers not so removed may be returned by the Customer at the Service Provider's expense or otherwise disposed of at the Customer's discretion. The Service Provider shall credit the Customer in full for any containers for which the Customer has been charged upon their collection or return.

51. SOCIAL VALUE

- 51.1 The Service Provider shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services, Service Provider Equipment and Consumables. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Service Provider shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Service Specification. Without prejudice to the generality of the foregoing, the Service Provider shall:
- 51.1.1 comply with all Policies and/or procedures and requirements set out in the Service Specification in relation to any stated environmental and social requirements, characteristics and impacts of the Services, Service Provider Equipment and Consumables and the Service Provider's supply chain;
- 51.1.2 maintain relevant policy statements documenting the Service Provider's significant social and environmental aspects as relevant to the Services, Service Provider

Equipment and Consumables being provided and as proportionate to the nature and scale of the Service Provider's business operations; and

- 51.1.3 maintain plans and procedures that support the commitments made as part of the Service Provider's significant social and environmental policies. The Service Provider shall meet reasonable requests by the Customer for information evidencing the Service Provider's compliance with the provisions of this Clause 51.

52. SERVICES INFORMATION

☒ (only applicable to the Contract if this box is checked)

- 52.1 Where requested by the Customer, the Service Provider shall provide the Customer with the Services Information in such manner and upon such media as agreed between the Service Provider and the Customer from time to time for the sole use by the Customer.
- 52.2 The Service Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Customer and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Customer following publication of the same in accordance with this Clause 52.
- 52.3 If the Services Information ceases to be complete and accurate, the Service Provider shall promptly notify the Customer in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 52.4 The Service Provider grants the Customer a perpetual, non-exclusive, royalty free licence to use the Services Information for the purpose of illustrating the range of goods and services (including, the Services) available pursuant to the Customer's contracts from time to time. Subject to Clause 52.5, no obligation to illustrate or advertise the Services Information is imposed on the Customer, as a consequence of the licence conferred by this Clause 52.4.
- 52.5 The Customer may reproduce for its sole use the Services Information provided by the Service Provider in the Customer's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Customer's external website and/or made available on other digital media from time to time.
- 52.6 Before any publication of the Services Information (electronic or otherwise) is made by the Customer, the Customer will submit a copy of the relevant sections of the Customer's services catalogue to the Service Provider for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Service Provider shall have no right to compel the Customer to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 52.6 or otherwise under the terms of this Contract.
- 52.7 If requested in writing by the Customer, and to the extent not already agreed as part of the Service Specification, the Service Provider and the Customer shall discuss and seek to agree in good faith arrangements to use any electronic trading system.

53. CUSTOMER DATA AND DATA PROTECTION

- 53.1 The provisions of Schedule 2-22 (Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects) shall apply in respect of Customer Data and Data Protection.

54. SECURITY REQUIREMENTS AND SERVICE PROVIDER PERSONNEL VETTING

- 54.1 The Service Provider shall comply, and shall procure the compliance of the Service Provider Personnel, with the Security Policy, the Security Management Plan and Schedule 2-17 (Security Accreditation) and the Service Provider shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Policy.
- 54.2 The Customer shall notify the Service Provider of any changes or proposed changes to the

Security Policy.

- 54.3 If the Service Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Contract Change Procedure.
- 54.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to Clause 54.3 the Service Provider shall continue to provide the Services in accordance with its existing obligations.
- 54.5 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 54.6 Notwithstanding Clause 54.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to its desired operating efficiency.
- 54.7 The Service Provider shall comply with Schedule 2-20 (Staffing) and the Staff Vetting Procedures in respect of all Service Provider Personnel employed or engaged in the provision of the Services.
- 54.8 The Service Provider confirms that all Service Provider Personnel employed or engaged by the Service Provider at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 54.9 The Service Provider shall provide training on a continuing basis for all Service Provider Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.

55. MAINTENANCE OF THE ICT ENVIRONMENT

☒ (only applicable to the Contract if this box is checked)

- 55.1 The Service Provider shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**").
- 55.2 The Service Provider shall provide to the Customer a draft Maintenance Schedule for approval within such period of time and in accordance with any other instructions of the Customer as specified in the Service Specification (or if not specified there, within a period of time from the Effective Date specified by the Customer acting reasonably).
- 55.3 Once the Maintenance Schedule has been approved with the prior written consent of the Customer, the Service Provider shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 55.4 The Service Provider shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.

56. INTELLECTUAL PROPERTY RIGHTS, INDEMNITY

Intellectual Property Rights

- 56.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in or to the other's Pre-Existing Intellectual Property Rights.

The Service Provider acknowledges that the Customer Data is the property of the Customer and the Customer hereby reserves all Intellectual Property Rights which may subsist in the Customer Data.

56.2 The Customer hereby grants to the Service Provider:

56.2.1 a non-exclusive, revocable licence to use the Customer Software on its standard licence terms (set out in Annex C to Schedule 2-18 (Software and Software Licence Terms)); and

56.2.2 a non-exclusive, revocable licence to use any Customer Pre-Existing Intellectual Property Rights (including any Intellectual Property Rights in any Customer Data) solely to the extent necessary and for the purposes of performing the Services under this Contract during the Term.

56.3 The Service Provider shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any software which is proprietary to the Customer or which is developed by or on behalf of the Service Provider under this Contract.

56.4 The Customer acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-18 (Software and Software Licence Terms) and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties. The Service Provider shall not do or allow to be done any act or omission which would cause the licence terms relating to the Open Source Ordered Software to be breached.

56.5 The Service Provider will convey to the Customer the Open Source Ordered Software and associated documentation (including technical specifications, user manuals, operating manuals, process definitions and procedures) on the applicable open source licence terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms).

56.6 Subject to Clause 56.8 and 56.9, all Contract Generated Intellectual Property Rights shall be proprietary to and owned by the Service Provider.

56.7 The Service Provider hereby grants, or shall procure the direct grant, to the Customer a perpetual, royalty free, irrevocable, non-exclusive licence to use the Contract Generated Intellectual Property Rights solely to the extent and for the purposes of receiving and using the Services under this Contract.

56.8 Where the applicable open sourcing licensing terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms) require that relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms the Service Provider or the Customer (as applicable) shall take all steps necessary to comply with the licensing terms, including making available the source code of the Contract Generated Intellectual Property Rights where required by the applicable open source licensing terms.

56.9 Where the applicable open source licensing terms set out in Schedule 2-18 (Software and Software Licence Terms) do not require that any relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms, the Customer shall be entitled at its discretion to request the Supplier to (and the Supplier shall, following such request) take all steps necessary to place the Contract Generated Intellectual Property Rights into open source, including complying with the applicable licensing terms and making available the source code of the Contract Generated Intellectual Property Rights.

56.10 The Service Provider:

56.10.1 hereby grants to the Customer a licence to use the Service Provider Software on

its standard licence terms (set out in Annex A to Schedule 2-18 (Software and Software Licence Terms));

56.10.2 hereby grants to the Customer a licence the Supplier's Pre-Existing Intellectual Property Rights to the extent necessary and for the purposes of receiving and using the Services under this Contract during the Term;

56.10.3 shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a licence to the Customer on the Third Party Software owner's standard licence terms (as set out in Annex B of Schedule 2-18 (Software and Software Licence Terms)); and

56.10.4 hereby grants to the Customer a non-exclusive, perpetual licence to copy the descriptions of the Services, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Customer under this Clause 56.10.

56.11 To the extent that the Service Provider creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials, relating to the provision of the Services ("**Materials**") it shall provide copies of all Materials to the Customer promptly and the Service Provider hereby grants to the Customer a royalty free, irrevocable, non-exclusive licence for such term as the Customer shall require to use all and any Intellectual Property Rights in the Materials as it shall reasonably require with the ability to sub-licence the same.

IPR Indemnity

56.12 The Service Provider shall ensure and procure that the availability, provision and supply of the Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

56.13 The Service Provider shall at all times, during and after the Term, indemnify the Customer and keep the Customer indemnified against all claims, demands, actions, costs, expenses (including legal costs and disbursements), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

56.13.1 availability, provision or use of the Services (or any parts thereof); and

56.13.2 performance of the Service Provider's responsibilities and obligations hereunder.

56.14 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.

56.15 If a claim or demand is made or action brought to which Clause 56.13 and/or 56.14 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:

56.15.1 modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement or the alleged infringement, provided that:

56.15.1.1 the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services;

- 56.15.1.2 such substitution shall not increase the burden or costs on the Customer; and
- 56.15.1.3 such modified or substituted goods and/or services items shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
- 56.15.2 procure a licence to use the Services on terms that are reasonably acceptable to the Customer; and
- 56.15.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 56.16 The provisions of Clauses 56.13 and 56.15 shall not apply insofar as any such claim or demand or action is in respect of any:
 - 56.16.1 use by the Customer of the Services in combination with any item, good or service not supplied or approved by the Service Provider (or its Sub-Contractors) where such use of the Services directly gives rise to the claim, demand or action; or
 - 56.16.2 modification carried out by or on behalf of the Customer to the Services provided under this Contract if such modification is not authorised by the Service Provider (or its Sub-Contractors) in writing; or
 - 56.16.3 use by the Customer of the Services in a manner not reasonably to be inferred from the Service Specification or requirements of the Customer.
- 56.17 If the Service Provider elects to modify the Services or to supply substitute goods and/or services pursuant to Clause 56.15.1 or to procure a licence under Clause 56.15.2 but such action has not resulted in the claim, demand or action for infringement or alleged infringement being avoided within six (6) months of the date on which the claim, demand or action was brought (or the date on which the Service Provider became aware (or should reasonably have become aware) of a potential claim, demand or action), then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity in Clause 56.13, the Service Provider shall be liable for the value of the additional costs incurred in implementing and maintaining replacement goods and/or services.
- 56.18 Clauses 56.13 and 56.15 set out the entire financial liability of the Service Provider with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder. This shall not affect the Service Provider's financial liability for other Defaults or causes of action that may arise hereunder.
- 56.19 The Customer warrants that the Service Provider's use of any Customer Pre-Existing Intellectual Property Rights supplied directly by the Customer in accordance with any instructions given by the Customer in connection with the use of such Intellectual Property Rights shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

Escrow

☐ (only applicable to the Contract if this box is checked)

- 56.20 The Service Provider:
 - 56.20.1 shall place the source code of software in escrow with the one (1) month from the Effective Day on the basis of the standard agreement or on such other terms as the Customer, the Service Provider and the escrow agent shall agree;

56.20.2 shall ensure that the software placed in escrow shall include material modifications, developments, updates, patches, enhancements or other modifications to the software from time to time;

56.20.3 hereby grants the Customer a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the source code and object code versions of the software placed in escrow. However, the foregoing licence shall only become effective if the Customer becomes entitled to obtain access to the source code version of that software pursuant to the escrow arrangement referred to in Clause 56.20.1 and the licence shall be subject to any restrictions contained therein in respect of the object code version of the software provided that such restrictions shall not detract from the rights granted under this Clause 56.20; and

56.20.4 the Customer hereby agree that both parties shall each pay their respective fees set out in any escrow agreement entered into pursuant to Clause 56.20.1.

57. EMPLOYMENT AND TUPE

☐ (only applicable to the Contract if this box is checked)

57.1 The provisions of Schedule 2-21 (Employment and TUPE) shall apply in respect of employment and TUPE on a business transfer or service provisions change.

58. IMPLEMENTATION SERVICES

☐ (only applicable to the Contract if this box is checked)

58.1 The Service Provider shall perform the Implementation Services in accordance Schedule 2-2 (Service Specification), with the timetable set out in the Implementation Plan and Schedule 2-5 (Implementation and Delivery).

59. ASSUMED CONTRACTS AND CUSTOMER FURNISHED ITEMS

☐ (only applicable to the Contract if this box is checked)

59.1 With effect from the date agreed by the parties in the Detailed Implementation Plan , the Customer shall:

59.1.1 transfer the Customer Furnished Items and any assets to the Service Provider in accordance with Schedule 2-5 (Implementation and Delivery); and

59.1.2 subject to Clause 59.2, transfer the benefit of the Assumed Contracts to the Service Provider provided, in each such case, that the Service Provider accepts and undertakes the related burden.

59.2 The Customer shall use reasonable endeavours to assign, novate or transfer each of the Assumed Contracts to the Service Provider with effect from the date agreed by the parties in the Detailed Implementation Plan. If any consent of any third party is required for the assignment, novation or transfer of an Assumed Contract and has not been obtained at, or before, the date on which the Detailed Implementation Plan is adopted, the Customer and the Service Provider shall each use all reasonable endeavours to obtain that consent as soon as possible after such date. Unless or until any Assumed Contract is assigned, novated or transferred, or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution, which may include the Service Provider finding an alternative source of supply and/or the Customer holding the benefit of the relevant Assumed Contract as agent for the Service Provider.

60. SERVICE PROVISION

[DN: This Clause may need to be updated to reflect how the Services will be delivered in practice.]

- 60.1 The Service Provider shall provide the Operational Services from the date on which Delivery Milestone M5 (Go-Live) is Achieved until expiry or termination of this Contract for any reason.
- 60.2 The Service Levels shall apply with effect from the start of the first complete month commencing after the Operational Services Commencement Date.
- 60.3 The Customer shall not store, distribute or transmit in its use of the Services any material that:
- 60.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 60.3.2 facilitates illegal activity;
- 60.3.3 depicts sexually explicit images; and/or
- 60.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.
- 60.4 The Customer shall remain responsible for its use of the Services, including any use by third parties (whether fraudulent or invited by the Customer).
- 60.5 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Service Provider in writing. This includes informing the Service Provider promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Service Provider shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action.
- 60.6 The Customer shall not resell or otherwise provide the Services directly or indirectly to third parties.
- 60.7 The Service Provider reserves the right to:
- 60.7.1 modify the Service Provider's System, its network, system configurations or routing configuration; or
- 60.7.2 modify or replace any Hardware or Software in its network or in Service Provider Equipment used to deliver any Services over its network,
- provided that this has no adverse effect on the Service Provider's obligations under this Contract and its provision of the Services or the Service Levels. If such changes will have an adverse effect, the Service Provider shall notify the Customer and the parties shall follow the Contract Change Procedure.

61. BENCHMARKING

☐ (only applicable to the Contract if this box is checked)

- 61.1 The Customer may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of Schedule 2-26 (Benchmarking).

62. CONTINUOUS IMPROVEMENT

☐ (only applicable to the Contract if this box is checked)

- 62.1 The Service Provider shall, at its own cost and expense, submit a report to the Customer within

twenty (20) Working Days following each anniversary of the Effective Date identifying the emergence of new and evolving relevant technologies or process changes, including in the IT, telecommunications or data centre field relevant to the Services. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or process, including the impact on the Service Provider's costs for provision of the Services.

- 62.2 If the Customer wishes to incorporate any improvement identified by the Service Provider under Clause 62.1, the Customer shall send the Service Provider a Change Request for consideration in accordance with Clause 8.

63. DISASTER RECOVERY

- 63.1 In the event of a Disaster, recovery of the Services shall be addressed in accordance with the BCDR Plan, as more particularly described in Schedule 2-16 (BCDR Plan).

64. COLLABORATIVE CLUSTERS

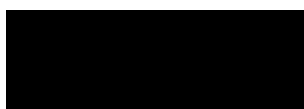
☐ (only applicable to the Contract if this box is checked)

- 64.1 The Service Provider shall provide the Services to the Customer and the other Contracting Authorities listed in Annex 1 of Schedule 2-23 (Collaborative Clusters), in accordance with the terms of that Schedule 2-23 (Collaborative Clusters).

This Contract is hereby agreed by the duly authorised representatives of the parties with effect from the Effective Date.

For and on behalf of the Customer

Signature:



Name:



Title: Group CSU Managing Director

Date: 01/10/2025

For and on behalf of the Service Provider

Signature:



Name:



Title: Partner

Date: 5 August 2025

SCHEDULE 2-1

INTERPRETATIONS

Acceptance Procedures	means the procedure of that name as specified in Schedule 2-6 (Acceptance Procedures).
Acceptance Test	means a test to be conducted in accordance with the provisions of Schedule 2-6 (Acceptance Procedure) and Acceptance Tests shall be construed accordingly.
Acceptance Test Criteria	means the test criteria specified in Schedule 2-6 (Acceptance Procedures).
Acceptance Test Period	means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-6 (Acceptance Procedures).
Accounting Reference Date	means in each year the date to which the Service Provider prepares its annual audited financial statements.
Achieve	means: (a) in respect of a Acceptance Test, to successfully pass a Acceptance Test in accordance with paragraph 2.3 of Schedule 2-6 (Acceptance Procedures); and (b) in respect of a Delivery Milestone, the issue of a Milestone Achievement Certificate in respect of that Delivery Milestone in accordance with paragraph 2.13 – 2.17 of Schedule 2-6 (Acceptance Procedures), and “Achieved” and “Achievement” shall be construed accordingly.
Acquired Rights Directive	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended.
Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event.
Affiliate	means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly are controlled by, or are under common control with the Service Provider or its Parent Company.
Allowable Assumption	means the assumptions made by the Service Provider as set out in Annex 3 of Schedule 2-4 (Charges and Invoicing).
Anticipated Profit Margin	has the meaning given to it in paragraph 5.2 of Schedule 2-28 (Payments on Termination).
[Applicable Service Provider Personnel]	[means any Service Provider Personnel who: (a) at the date of termination of the Contract:

	(i) are employees of the Service Provider; (ii) are Dedicated Service Provider Personnel; (iii) have not transferred (and are not in scope to transfer at a later date) to the Customer or the Replacement Service Provider by virtue of TUPE; (b) are dismissed or given notice of dismissal by the Service Provider within: (i) forty (40) Working Days of the date of termination of the Contract; or (ii) such longer period required by Law, their employment contract (as at the date of termination) or an applicable collective agreement; (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Service Provider; and (d) the Service Provider can demonstrate to the satisfaction of the Customer: (i) are surplus to the Service Provider's requirements after termination of the Contract notwithstanding its obligation to provide services to its other customers; (ii) are genuinely being dismissed for reasons of redundancy; and (iii) have been selected for redundancy by the Service Provider on objective grounds other than the fact that the Service Provider is entitled to reimbursement under this provision in respect of such employees.] [DN: Depending on the approach take with Schedule 2-21 (Employment and TUPE, this may need updating and specific legal advice should be sought.)]
Assumed Contracts	means contracts between the Customer and third parties that the Service Provider identifies in its Tender as being required for its performance of the Services and that will be subject to the obligations of Clause 59.
Authority	has the meaning given to it in recital a) of this Contract.
Availability	means when the Services, including all the functions of the Service Provider System and the solution developed in accordance with the Service Provider Solution, are accessible and can be utilised by End Users and " Available " shall be construed accordingly.
BACS	means the Banks Automated Clearing System.
Balanced Scorecard Report	has the meaning given to it in paragraph 3.1.2 of Schedule 2-7 (Contract, Service Management and Reporting).

BCDR Plan	means the plan consisting of general business continuity and disaster recovery principles, including the Service Continuity Plan and the corporate resolution planning, as further described in Schedule 2-16 (BCDR Plan).
Benchmarker	means the independent third party appointed under paragraph 3.1 of Schedule 2-26 (Benchmarking).
Benchmark Report	means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5 of Schedule 2-26 (Benchmarking).
Benchmark Review	means a review of one or more of the Services carried out in accordance with paragraph 4 of Schedule 2-26 (Benchmarking) to determine whether those Services represent Good Value (as defined in Schedule 2-26).
Beneficiary	means a party having (or claiming to have) the benefit of an indemnity under this Contract.
Breakage Costs Payment	means an amount equal to the Redundancy Costs and the Contract Breakage Costs as at termination as determined in accordance with paragraph 2 of Schedule 2-28 (Payments on Termination).
Business Continuity Plan	has the meaning set out in paragraph 2.2(a)(ii) of Schedule 2-16 (BCDR Plan).
Cabinet Office Markets and Suppliers Team	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function.
CCN Effective Date	has the meaning given to it in paragraph 3.8.1 of Schedule 2-8 (Contract Change Procedure).
Change Request	has the meaning given to it in paragraph 3.1 of Schedule 2-8 (Contract Change Procedure).
Charges	means the Delivery Milestone Payments and the Operational Charges.
Claim	means any claim which it appears that a Beneficiary is, or may become entitled to indemnification under this Contract.
Cluster Member	means a Contracting Authority that is listed in Annex A of Schedule 2-23 (Collaborative Clusters).
Code	has the meaning given to it in Clause 18.5 of this Contract.
Commercially Sensitive Information	means: information of a commercially sensitive nature relating to: (a) the pricing of the Services; (b) details of the Service Provider's IPRs; and/or (c) the Service Provider's business and investment plans; which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss.

Comparable Supply	the supply of services to another customer of the Service Provider that are the same or similar to any of the Services.
Compensation Payment	means the sum calculated in accordance with paragraph 5 (Compensation Payment) of Schedule 2-28 (Payment on Termination).
Confidential Information	means the Customer Confidential Information and/or the Service Provider Confidential Information.
Consumables	means any consumables supplied to the Customer by the Service Provider under this Contract (to include, without limitation, any consumables referred to in the Service Specification).
Contract	means the Clauses of this contract together with the Schedules and annexes to it and any documents referred to in it or attached to it.
Contract Breakage Costs	means the amounts payable by the Service Provider to its Sub-Contractors or other third parties (as applicable) for terminating relevant Sub-Contractor contracts or third party contracts.
Contract Change Note (CCN)	means the contract change note specified in Annex A to Schedule 2-8 (Contract Change Procedure).
Contract Change Procedure	means the contract change procedure specified in Schedule 2-8 (Contract Change Procedure) for making changes to this Contract.
Contract Generated Intellectual Property Rights	means any Intellectual Property Rights created by the Service Provider as a result of the performance by the Service Provider of its obligations under this Contract including the Specially Written Software. There is and will be no Contract Generated Intellectual Property Rights under this contract.
Contracted Hours	means 24 hours each day, seven Days each week and 365 Days each year (or 366 Days in each leap year) unless otherwise notified by the Customer to the Service Provider.
Contracting Authority	means a contracting authority as listed in the OJEU Notice.
Contract Year	a consecutive period of twelve (12) months commencing on the [Effective Date]
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	have the meaning given in the UK GDPR.
Conviction	means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2001 (SI 2001/1192) or any replacement or amendment to those Orders) provided any such convictions are not “protected” convictions as

	defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)).
Critical Performance Failure	means: (a) the Service Provider accruing in aggregate ten (10) or more Service Points (in terms of the number of points allocated) in any three (3) Service Periods; or (b) the Service Provider accruing Service Credits which meet or exceed the Service Credits Cap.
Critical Service Contract	means the overall status of the Services provided under this Contract as determined by the Customer and specified in paragraph 1.1 of Part B of Schedule 2-16 (BCDR Plan).
Crown Body	means any department, office or agency of the Crown and “ Crown Bodies ” shall be construed accordingly.
Customer Cause	means any material breach by the Customer of any of the Customer Responsibilities, except to the extent that such breach is: (a) the result of any act or omission by the Customer to which the Service Provider has given its prior consent or requested; or (b) caused by the Service Provider, any Sub-Contractor or any Service Provider Personnel.
Customer Confidential Information	means all Personal Data, Customer Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.
Customer Data	means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Service Provider by or on behalf of the Customer; or (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Customer is the Data Controller.
Customer Furnished Items	means any items issued or otherwise furnished in connection with this Contract by or on behalf of the Customer.
Customer Premises	means premises owned, controlled or occupied by the Customer or any Crown Body which are made available for use by the Service Provider or its Sub-Contractors for provision of the Services on the terms set out in this Contract or any separate agreement or licence.

Customer Responsibilities	means the obligations and dependencies on the Customer that are set out in Schedule 2-24.
Customer Software	means software which is owned by or licensed to the Customer (other than under or pursuant to this Contract) and which is or will be used by the Service Provider for the purposes of providing the Services, as set out in Schedule 2-18 (Software and Software Licence Terms).
Customer System	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Service Provider in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Service Provider System or which is necessary for the Customer to receive the Services.
Customer's Contract Manager	
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data, carried out in accordance with Article 35 of the UK GDPR.
Data Protection Legislation	means all applicable data protection and privacy laws in force from time to time, including the EU General Data Protection Regulation ((EU) 2016/679) as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the " UK GDPR "), the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2423), and any amending, implementing or replacement legislation from time to time.
Data Subject Access Request	means 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.
Days	means calendar days.
Dedicated Service Provider Personnel	means all Service Provider Personnel then assigned to the Services or any part of the Services. If the Service Provider is unsure as to whether Service Provider Personnel are or should be regarded as so assigned, it shall consult with the Customer whose view shall be determinative as to whether that the employee has been materially involved in the provision of the Services or any part of the Services.
Deductions	means all Service Credits or any other deductions relevant to the performance of the Service Provider under the Contract.
Default	means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or

	any default, act, omission, negligence or statement of any party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.
Delivery Milestones	means the milestones set out in the Implementation Plan.
Delivery Milestone Payments	means the charges set out in paragraph 3.2 of Schedule 2-4 (Charges and Invoicing).
Detailed Implementation Plan	means the updated implementation plan to replace the Outline Implementation Plan prepared by the Service Provider pursuant to Schedule 2-5 (Implementation).
Disaster	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of one (1) month or more or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period.
Disaster Recovery	means the process of restoration of the Services by the provision of the Disaster Recovery Services.
Disaster Recovery Plan	has the meaning set out in paragraph 2.2(a)(iii) of Schedule 2-16 (BCDR Plan).
Disaster Recovery Services	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Service Provider pursuant to Schedule 2-16 (BCDR Plan) for restoring the Services following the occurrence of a Disaster.
Disaster Recovery System	means the system identified by the Service Provider in the Service Provider Solution which shall be used for the purpose of delivering the Disaster Recovery Service.
Documentation	means descriptions of the Services, details of the Service Provider System (including: (i) vendors and versions for off-the-shelf components; and (ii) source code and build information for components that are owned by the Customer under this Contract), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: (a) is required to be supplied by the Service Provider to the Customer under this Contract; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Service Provider in order to provide the Services; and/or

	(d) has been or shall be generated for the purpose of providing the Services.
Effective Date	means the date on which this Contract is signed by both parties.
Employee Liabilities	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including ©n relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; and (g) 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.
End User	means any person (including the Customer) authorised to use the Services, including the Service Provider System and the solution developed in accordance with the Service Provider Solution.
Emergency Maintenance	means ad hoc and unplanned maintenance provided by the Service Provider where: a) the Customer reasonably suspects that the ICT Environment or the Goods and/or Services, or any part of the ICT Environment or the Goods and/or Services, has or may have developed a fault, and notifies the Service Provider of the same; or b) the Service Provider reasonably suspects that the ICT Environment or the Goods and/or Services, or any part the ICT Environment or the Goods and/or Services, has or may have developed a fault.
Environmental Information	means the Environmental Information Regulations 2004 together

Regulations	with any Guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.
European Economic Area	means the European Economic Area consists of the European Union and all European Free Trade Association countries except Switzerland.
Exclusive Assets	means those assets used by the Service Provider or a Sub-Contractor which are used exclusively in the provision of the Services.
Exit and Service Transfer Arrangements	means the arrangements for exit and Service Transfer, as set out in Schedule 2-12 (Exit and Service Transfer Arrangements), which shall apply in the event of the expiry or termination (howsoever arising) of this Contract or any of the Services.
Exit Plan	means the plan produced and updated by the Service Provider during the Term in accordance with paragraph 5 of Schedule 2-12 (Exit and Service Transfer Arrangements).
Extension Period	has the meaning given to it in Clause 10.1.2.
Financial Distress Event	has the meaning given to it in paragraph 3.1 of Schedule 2-25 (Financial Distress).
Financial Distress Termination Event	has the meaning given to it in paragraph 6.1 of Schedule 2-25 (Financial Distress).
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any Guidance and/or codes of practice issued by the Information Commissioner's Office or relevant Government Department in relation to such legislation.
Force Majeure Event	means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts. Excluding for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements.
Framework Agreement	means the meaning given to it in recital b) of this Contract.
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.

General Change in Law	means a change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply.
Good Industry Practice	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Goods	means any goods used in the provision of the Services including hardware.
Guarantee	means the deed of guarantee in favour of the Customer entered into by the Guarantor on or about the date of this Contract pursuant to Clause 43, or any guarantee acceptable to the Customer that replaces it from time to time.
Guarantor	means [insert name] , a company registered in [insert country] with company number [insert company number] and whose registered office is at [insert registered address] .
Guidance	means any applicable binding guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Service Provider by the Customer and/or have been published and/or notified to the Service Provider by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body.
Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax and others.
ICT Environment	means the Customer System and the Service Provider System.
Impact Assessment	means an assessment of the impact that the change to the Contract proposed Change Request will have on the Services.
Implementation Plan	means either the Outline Implementation Plan or the Detailed Implementation Plan, as in force from time to time, that describes the ongoing implementation of the Services during the Term, as set out in Schedule 2-5 (Implementation Plan).
Implementation Services	means the elements of the Services that are provided to the Customer from the Effective Date until the Achievement of Delivery Milestone M5 (Go-Live) and/or which are required for the successful implementation of the solution developed in accordance with the Service Provider Solution and in accordance with the terms of this Contract, such services as are more particularly described in Schedule 2-2 (Service Specification) and the Implementation Plan.
Indemnifier	means a party from whom an indemnity is sought under this Contract.
Indexation	means the adjustment of an amount or sum in accordance with

	paragraph 3.1.3 of Schedule 2-4.
Information	has the meaning given under section 84 of FOIA.
Information Commissioner's Office	means the independent body responsible for policing and enforcing the data protection and freedom of information regime in the UK.
Initial Term	has the meaning given to it in Clause 10.1
Insolvency Event	means where: a) a person is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; b) a person commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a person (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over a person (being a company); e) the holder of a qualifying floating charge over the assets of a person (being a company) has become entitled to appoint or has appointed an administrative receiver or a receiver is appointed (or entitled to be appointed) over the assets of a person; f) a person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or g) any event occurs, or proceedings are taken, with respect to a person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) – (f).
Intellectual Property Rights	means patents, patent applications, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom).
Interfacing Requirements	means the technical and organisational requirements for the Customer System to successfully interface and integrate with the Service Provider System in the provision of the Services, as more particularly described in the Service Specification.

Intervention Trigger Event	means: (a) any event falling within limbs [a, b, c, d, e and f] of the definition of a Service Provider Termination Event; (b) a Default by the Service Provider that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Service Provider accruing in aggregate 7.5 or more Service Points (in terms of the number of points allocated) in any 3 Service Periods; (d) the Service Provider accruing Service Credits which meet or exceed 75% of the Service Credits Cap; and/or (e) the Service Provider not Achieving a Delivery Milestone within seventy-five (75) Days of its relevant Milestone Date (as a result of a Default by the Service Provider).
Insolvency Continuity Plan	has the meaning given in paragraph 2.2(a)(iv) of Schedule 2-16 (BCDR Plan).
Invoicing Procedure	means the procedure by which the Service Provider invoices the Customer, as set out in Schedule 2-4 (Charges and Invoicing).
Key Performance Indicator and KPI	means the key performance indicators set out in paragraph 10 of Schedule 2-3.
Key Sub-Contractor	means the Sub-Contractors specified in paragraph 2 of Schedule 2-9 (Sub-Contractors).
Law	means any applicable law, statute, bye-law, regulation, order, regulatory policy, Guidance or industry code, rule of Court or mandatory directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body including the Security Policy Framework and the Code.
Liquidated Damages	means the liquidated damages specified in Schedule 2-15 (Liquidated Damages).
Liquidated Damages Period	means the period specified in paragraph 2.2 of Schedule 2-15 (Liquidated Damages) for each instance where Liquidated Damages apply.
Maintenance Schedule	has the meaning given to it in Clause 54 (Maintenance of the ICT Environment).
Malicious Software	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Material Performance Failure	means persistent failure to perform as required under this Contract.

Materials	has the meaning given to it in Clause 56.11 of this Contract.
Mediator	has the meaning given to it in Schedule 2-10 (Dispute Resolution Procedure).
Medical Devices Laws	means: (a) in respect of Services placed on the market or put into service prior to 26 May 2020, the Medical Devices Directive (as implemented into UK law); (b) in respect of Services placed on the market or put into service after 26 May 2020, the Medical Devices Regulation (as implemented into UK law); (c) the requirements of a Quality Management System in respect of medical devices as set out in ISO 13485; (d) any other Laws relating to the promotion and sale of medical devices; and (e) any applicable Guidance (including MEDDEVs), direction or determination and any policies, advice or industry alerts which apply to the Services, published by the MHRA, Notified Bodies (as defined in the Medical Devices Regulation 2017/745), the Medicines and Healthcare products Regulatory Agency, the European Commission and/or any other regulator or competent body from time to time.
Milestone Achievement Criteria	means the criteria that must be met for a Delivery Milestone to be Achieved, as set out in paragraph 4 of Schedule 2-6 (Acceptance Procedures).
Milestone Achievement Certificate	means the certificate to be granted by the Customer when the Service Provider has Achieved a Delivery Milestone, which shall be in substantially the same form as that set out in Annex 1 of Schedule 2-6 (Acceptance Procedures).
Milestone Date	means the date set out against the relevant Delivery Milestone in the Implementation Plan by which the Delivery Milestone must be Achieved.
Multi-Party Dispute	means a dispute which involves the parties and one or more Related Service Provider and/or Sub-Contractor.
Multi-Party Dispute Resolution Procedure	has the meaning given to it in paragraph 4.1 of Schedule 2-10 (Dispute Resolution Procedure).
NHS Employment Check Standards	means the legal and mandatory checks employers must carry out for the appointment and on-going employment of all individuals in the NHS and include all pre-appointment checks that are required by law, those that are mandated by Department of Health policy, and those that are required for access to the NHS Care Record Service. The standards apply to permanent staff, staff on fixed-term contracts, temporary staff, volunteers, students, trainees, contractors as well as on the appointment of locums and agency staff (in which case the standards must be met by providers of such staff).

Non-trivial Customer Base	means a significant customer base with respect to the date of first release and the relevant market but excluding affiliates and other entities related to the licensor.
Notice of Arbitration	means the formal notice from the Service Provider or the Customer to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure).
Notifiable Default	has the meaning given to it in Clause 21.1.
Occasion of Tax Non-Compliance	means any tax return of the Service Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Service Provider under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation 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 Service Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime; and/or (iii) any tax return of the Service Provider submitted to a Relevant Tax Authority on or after 1 October 2012 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 Effective Date or to a civil penalty for fraud or evasion.
OJEU Notice	means the contract notice issued by the Authority in respect of the Framework Agreement.
Open Source Ordered Software	means the open software source listed in Schedule 2-18 (Software and Software Licence Terms).
Operating Environment	means the Customer System and the Sites.
Operational Charges	means the charges set out in paragraph 3.4 of Schedule 2-4.
Operational Services	means the elements of the Services that are provided following the Achievement of Delivery Milestone M5 (Go-Live) and which are required for the successful operation of the solution produced in accordance with the Service Provider Solution and in accordance with the terms of this Contract, such services as are more particularly described in Schedule 2-2 (Service Specification).
Operational Services Commencement Date	means the date of commencement of the provision of the Operational Services by the Service Provider.
Outline Implementation Plan	means the initial implementation plan that the Service Provider submits as part of its Tender, incorporated into Annex 1 of Schedule 2-5 at the Effective Date.
Parent Company	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate

	Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term “ Holding Company ” shall have the meaning given by the Companies Act 2006 or any statutory re-enactment or amendment thereto.
Performance Failure	means a failure to meet the Service Levels.
Performance Improvement Plan	means the plan produced in accordance with paragraph 11 of Schedule 2-3 (Performance Management).
Performance Improvement Plan Service Credit	means the plan for Service Credit application from the Service Provider to the Customer if Service Provider fails to achieve the objectives of the relevant Performance Improvement Plan to Resolve the Service Incident or remedy the Persistent Breach within the agreed timescales
Performance Monitoring Reports	has the meaning given to it in paragraph 3.1.1 of Schedule 2-7 (Contract, Service Management and Reporting).
Performance Review Meeting	means the regular meetings between the Service Provider and the Customer to manage and review the Service Provider's performance under this Contract, as further described in paragraph 3.5 of Schedule 2-7 (Contract, Service Management and Reporting).
Permitted Maintenance	has the meaning given to it in Clause 54.3 (Maintenance of the ICT Environment).
Persistent Breach	has the meaning given to it in Schedule 2-3 (Performance Management).
Policies	means the policies, rules and procedures of the Customer as set out in Schedule 2-2 (Service Specification) and as notified to the Service Provider from time to time.
Pre-Existing Intellectual Property Rights	means any Intellectual Property Rights vested in or licensed to: (a) the Service Provider prior to or independently of the performance by the Service Provider of its obligations under this Contract; and (b) the Customer prior to or independently of the performance by the Customer of its obligations under this Contract.
Pricing Schedule	means the schedule of the Charges for the Services that the Service Provider submitted as part of its Tender and is included in Annex 1 of Schedule 2-4 (Charges and Invoicing).
Prohibited Acts	has the meaning given to it in Clause 29.1.1.
Protective Measures	means appropriate technical and organisational security 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 such measures adopted by it.

Quarter	means a three (3) month period beginning on 1 st January, 1 st April, 1 st July or 1 st October. The term “ Quarterly ” shall be similarly construed.
Rectification Time	has the meaning given to it in Schedule 2-3 (Performance Management).
[Redundancy Costs]	[means the total sum of any statutory redundancy payments paid to Applicable Service Provider Personnel, each amount apportioned between the Service Provider and the Customer based on the time spent by such employee on the Services as a proportion of the total Service duration.]
Reference Bid	means a response to an invitation to tender (or similar) for the provision of services similar to the Services from a potential customer (including the Service Provider’s existing customers) that the Service Provider is intending to bid for.
Regulatory Body	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer.
Related Service Provider	means any person who provides services to the Customer in relation to this Contract from time to time, which persons include as at the Effective Date
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any Guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Relevant Tax Authority	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Service Provider is established.
Remedial Adviser	means the person appointed pursuant to Clause 22.2.1.
Remedial Adviser Failure	has the meaning given to it in Clause 22.6.
Remediation Plan	means a plan prepared by the Service Provider to address the impact of, and prevent the reoccurrence of, a Notifiable Default by the Service Provider.
Remediation Plan Failure	means: (a) the Service Provider failing to submit or resubmit a draft Remediation Plan to the Customer within the timescales specified in the Remediation Plan Process; (b) the Customer, acting reasonably, rejecting a revised draft of the Remediation Plan submitted by the Service Provider pursuant to Clause 21.7; (c) the Service Provider failing to rectify a material Default (as referred to in Clause 21) within thirty (30) Working Days of a Notifiable Default, save that where the parties have agreed a Remediation Plan in respect of that Default and the Service Provider can demonstrate to the Customer’s

	reasonable satisfaction that it is implementing the Remediation Plan in good faith, the date specified in the Remediation Plan by which the Service Provider must rectify the material Default; (d) a Material Performance Failure re-occurring in respect of the same Service Level for the same (or substantially the same) root cause in any of the three (3) Service Periods subsequent to the Service Period in which the initial Material Performance Failure occurred; (e) the Service Provider not Achieving a Delivery Milestone by the expiry of the Liquidated Damages Period; and/or (f) following the successful implementation of a Remediation Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default.
Remediation Plan Process	means process for preparing the Remediation Plan, as set out in Clause 21.
Replacement Services	means any services which are the same as or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Customer internally and/or by any third party.
Replacement Service Provider	means any third party service provider of Replacement Services, either in whole or in part, appointed by the Customer from time to time (or where the Customer is providing Replacement Services for its own account, the Customer).
Request for Estimate	means a written request sent by the Customer to the Service Provider, requiring that the Service Provider provides the Customer with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Customer exercises its right under Clause 10.9 to terminate this Contract for convenience.
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Required Action	has the meaning given to it in Clause 44.1(a).
Resolved	has the meaning given to it in paragraph 7.8 of Schedule 2-3 (Performance Management) and “Resolve” and “Resolution” shall be construed accordingly.
Review Report	has the meaning given to it in paragraph 7.2(a) to 7.2(c) of Schedule 2-16 (BCDR Plan).
Risk Register	means the register of risks and contingencies agreed by the parties from time to time that are factored into the Charges due under this Contract, a copy of which is set out in Annex 2 of Schedule 2-4 (Charges and Invoicing).

Satisfaction Survey	has the meaning given to it in paragraph 6.1 of Schedule 2-7 (Performance Management).
Scheduled Downtime	has the meaning given to it in Schedule 2-3 (Performance Management).
Security Management Plan	means the Service Provider's security plan prepared pursuant to paragraphs 6.5 and 6.6 of Schedule 2-17 (Security Accreditation), an outline of which is set out in Annex 4 of Schedule 2-17 (Security Accreditation).
Security Policy	means the Customer's security policy annexed to Annex A of Schedule 2-17 (Security Accreditation), as updated from time to time.
Security Policy Framework	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division).
Service Continuity Plan	means the plan prepared pursuant to paragraph 2 of Schedule 2-16 (BCDR Plan) which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.
Service Credits	means the service credits specified in Schedule 2-3 (Performance Management) which shall be payable to the Customer by the Service Provider in the event of a Performance Failure.
Service Credits Cap	means: (a) in the period of twelve (12) months from the Operational Services Commencement Date, 20% of the estimated Operational Charges payable in that period, as set out in the Pricing Schedule; and (b) during the remainder of the Term, 20% of the Operational Charges paid and/or due to be paid to the Service Provider under this Contract in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued.
Service Downtime	means any period during which the Services are not Available or are otherwise not live, accessible and/or fully functioning.
Service Failure	means a failure by the Service Provider to deliver any part of the Services.
Service Incident	means a reported occurrence of a failure by the Service Provider to deliver any part of the Services in accordance with the Service Specification or a reduction in the quality of the Services caused by the Service Provider.
Service Incident Reports	means reports submitted by the Service Provider to the Customer as specified in Schedule 2-7 (Contract, Service Management and Reporting).
Service Levels	means the agreed levels of performance of the Services, including the Key Performance Indicators, Availability and the Rectification Times of Service Incidents, as set out in Schedule 2-3

	(Performance Management).
Service Period	means [one (1) calendar month, save that: (a) the first period shall begin on the Operational Services Commencement Date and shall expire at the end of the calendar month in which the Operational Services commenced; and (b) the final period shall commence on the first Day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term.]
Service Points	means the points that accrue in relation to a failure by the Service Provider to achieve the Service Levels, as set out in Schedule 2-3.
Service Provider Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Service Provider, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
Service Provider Contract Manager	
Service Provider Equipment	means the hardware, computer and communication devices and equipment supplied by the Service Provider or its Sub-Contractors (but not hired, leased or loaned from the Customer) for the provision of the Services.
Service Provider Non-Performance	has the meaning given to it in Clause 42.2.
Service Provider Personnel	means all employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor.
Service Provider Request	means a notice served by the Service Provider requesting that a dispute be treated as a Multi-Party Dispute, setting out its grounds for such request and specifying each Related Service Provider(s) and/or Sub-Contractor(s) that it believes should be involved in the Multi-Party Dispute Resolution Procedure in respect of such dispute.
Service Provider Software	means the proprietary software of the Service Provider as set out in Schedule 2-18 (Software and Software Licence Terms) including any applicable updates, upgrades, enhancements, configuration, development, or other derivative work.
Service Provider Solution	means the Service Provider's description of the solution that meets the Customer's requirements, as set out in Annex 2 of Schedule 2-2 (Service Specification).
Service Provider System	means the information and communications technology system used by the Service Provider in providing the Services including the Software, the Service Provider Equipment and related cabling

	(but excluding the Customer System).
Service Provider Termination Event	means: (a) the Service Provider's level of performance constituting a Critical Performance Failure; (b) the Service Provider committing a material Default which is irremediable; (c) as a result of the Service Provider's Default, the Customer incurring losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 14.1.3 (Limitation of Liability); (d) a Remediation Plan Failure; (e) any failure by the Service Provider to implement the changes set out in a Benchmarking Report as referred to in paragraph 5 of Schedule 2-26 (Benchmarking); (f) a breach as referred to in Clause 10.2.5 regarding an Occasion of Tax Non-Compliance; (g) the Service Provider committing a material Default under Clause 3.6.7, including failing to provide details of steps being taken and mitigating factors which in the reasonable opinion of the Customer are acceptable; (h) a Remedial Adviser Failure; (i) where a Customer's right of termination is expressly reserved in this Contract; (j) the Service Provider committing a material Default under any of the following: - Clause 17 (Confidentiality); - Clause 18 (Freedom of Information); - Clause 28 (Discrimination and Equality); - Clause 29 (Bribery and Prohibited Acts); - Clauses 30 and 31 (Corporate Social Responsibility and Modern Slavery); - Clause 32 (Transfer and Sub-Contracting); - Clause 52 (Customer Data and Data Protection); and/or

	- in respect of any security requirements set out in [Schedule 2-2 (Service Specification), Schedule 2-13 (Standards and Regulations) and Schedule 2-17 (Security Accreditation)]; and/or - in respect of any requirements set out in Clause 57 (Staffing and TUPE) and Schedule 2-20 (Staffing); (k) [the Guarantee (granted pursuant to Clause 43) ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Customer with the Guarantor or with another guarantor which is acceptable to the Customer);] (l) a change of control (within the meaning of Section 1124 of the Corporation Tax Act 2010) of the Service Provider [or the Guarantor] unless: - the Customer has given its prior written consent to the particular change of control, which subsequently takes place as proposed; or - the Customer has not served its notice of objection within six (6) months of the later of: a) the date on which the change of control took place; or b) the date on which the Customer was given notice of the change of control; (m) a change of control (within the meaning of Section 1124 of the Corporation Tax Act 2010) of a Key Sub-Contractor unless, within six (6) months of being notified by the Customer that it objects to such change of control, the Service Provider terminates the relevant Key Sub-Contractor and replaces it with a comparable Sub-Contractor which is approved by the Customer pursuant to paragraph 3 of Schedule 2-9; (n) the Customer has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; and/or (o) a failure by the Service Provider to comply in its performance of the Services with its legal obligations in the fields of environmental, social or labour law.
Service Specification	means the specification of the Services that the Service Provider shall deliver to the Customer in accordance with the terms of this Contract, as set out in Annex 1 of Schedule 2-2.
Service Transfer	means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to the Customer or to a Replacement Service Provider.

Services	means any and all services to be provided by the Service Provider under this Contract, including those set out in Schedule 2-2 (Service Specification).
Services Information	means the information that describes the Services that may be requested by the Customer and supplied by the Service Provider for the Customer in accordance with Clause 52 for inclusion in the Customer's services catalogue from time to time.
Severity Level	means the level of severity allocated to Service Incident by the Customer in accordance with Schedule 2-3 (Performance Management).
Sites	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services or where any part of the Service Provider System is situated or where any physical interface with the Customer System takes place.
Software	means any Specially Written Software, Service Provider Software and Third Party Software.
Specially Written Software	means any software created by the Service Provider (or by a third party on behalf of the Service Provider, including by any Sub-Contractor) specifically for the purposes of this Contract.
Specific Change in Law	means a change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
Staff Vetting Procedures	means the Customer's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures.
Staffing Information	has the meaning given to it in Schedule 2-21 (Employment and TUPE).
Standards and Regulations	means the standards and regulations as set out in Schedule 2-13 (Standards and Regulations) with which the Service Provider shall comply in the provision of the Services and its responsibilities and obligations hereunder.
Step-In Notice	has the meaning given to it in Clause 44.1.
Step-In Trigger Event	means: (a) any event falling within the definition of a Service Provider Termination Event; (b) a Default by the Service Provider (or a Sub-Contractor) that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Customer considers that the circumstances constitute an emergency despite the Service Provider not being in breach of its obligations under this Contract;

	(d) the Customer being advised by a Regulatory Body that the exercise by the Customer of its rights under Clause 44 is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment engaged in connection with the Services; and/or (f) a need by the Customer to take action to discharge a statutory duty.
Step-Out Date	has the meaning given to it in Clause 44.5.
Step-Out Notice	has the meaning given to it in Clause 44.5.
Step-Out Plan	has the meaning given to it in Clause 44.6.
Strategic Supplier	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers .
Sub-Contractor	means any supplier selected, appointed and managed by the Service Provider in accordance with the provisions of Schedule 2-9 (Sub-Contractors) including Key Sub-Contractors.
Sub-processor	means any third party appointed to process Personal Data on behalf of the Service Provider related to this Contract.
Tender	means the Service Provider's response to the Customer's invitation to tender for the provision of the Services under this Contract.
Term	means the Initial Term and any Extension Period and/or Termination Assistance Period (as applicable).
Termination Assistance Period	has the meaning given to it in Schedule 2-12 (Exit and Service Transfer).
Termination Estimate	has the meaning given to it in paragraph 10.2 of Schedule 2-28 (Payments on Termination).
Termination Notice	means a written notice of termination given by one party to the other, notifying the other party of its intention to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for such termination.
Termination Payment	has the meaning given to it in Clause 10.10.
Test Certificate	means a certificate materially in the form of the document contained in Annex 2 of Schedule 2-6 (Acceptance Procedures) issued by the Customer when a deliverable meets its relevant Acceptance Test Criteria.
Third Party COTS Software	means Third Party Software that: (a) the third party supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are

	not typically negotiated by the third party supplier save as to price; and (b) has a Non-trivial Customer Base.
Third Party Software	means software which is proprietary to any third party (other than an Affiliate of the Service Provider) which is or will be used by the Service Provider for the purposes of providing the Services, including the software specified as such in Schedule 2-18 (Software and Software Licence Terms).
Transferable Assets	means those of the Exclusive Assets which are capable of legal transfer to the Customer.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.
Unrecovered Payment	means an amount equal to the lowest amount specified in paragraph 3 of Schedule 2-28 (Payments on Termination).
UnScheduled Downtime	has the meaning given to it in Schedule 2-3 (Performance Management).
Update	means in relation to any Software and/or any deliverable means a version of such item which has been produced primarily to overcome defects in, or to improve the operation of, that item.
URN	means the unique reference number that the Customer Prior to raising a purchase order with the Service Provider the Customer must first request from the Framework Authority (London Procurement Partnership).
Value Added Tax	means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax.
Verification Period	means in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column [11] in the table in Annex 3 of Schedule 2-4 (Charges and Invoicing).
Wilful Default	means a deliberate act or omission which will result in (or can reasonably be expected to have been intended to result in) a breach of this Contract.
Workaround	means a temporary fix to a Service Incident that restores the Services to at least the standard required under the Contract for the Services to perform normally until the Service Incident can be fully Resolved.
Working Days	means Monday to Friday inclusive, excluding English public and bank holidays.
Working Hours	means between 9:00 am and 5:00 pm on a Working Day.
Year	means a period of twelve (12) months.

SCHEDULE 2-2
SERVICE SPECIFICATION

1. Service Specification

- 1.1. Annex 1 of this Schedule 2-2 sets out the specification of the applicable Services that the Service Provider shall deliver to the Customer in accordance with the terms of this Contract.

2. Service Provider Solution

- 2.1. Annex 2 of this Schedule 2-2 describes the solution that the Service Provider shall:
- 2.1.1. ensure complies with all the Customer's requirements under this Contract;
 - 2.1.2. deploy to ensure that it satisfies all of its obligations under this Contract; and
 - 2.1.3. deliver to the Customer in accordance with the terms of this Contract.

ANNEX 1
SERVICE SPECIFICATION

1 Implementation Services

- 1.1 If applicable, the Service Provider shall perform the Implementation Services in accordance with the Implementation Plan, set out in Schedule 2-5 (Implementation).

2 Operational Services

- 2.1 Provision, hosting, maintenance and support of a data quality dashboard presenting an agreed set of metrics which monitor data quality of Elective care datasets.
- 2.2 Importing and processing of data made available by the Customer
- 2.3 The data quality dashboard to flag to the user data quality issues across provided rule sets
- 2.4 Weekly processing of data and indicators
- 2.5 Weekly refresh of dashboard and indicators
- 2.6 Scope of provision to be NHS Acute and Independent Sector Providers
- 2.7 Dashboard to report trends in data quality over time
- 2.8 Visual display of data quality issues for providers at record level to aid investigation and correction in source systems
- 2.9 Role based access to restrict access levels to data. Access hierarchy based on Provider/System/Regional/National levels
- 2.10 Service support and management including but not limited to Service Desk and user management
- 2.11 20 days support for changes and additions to the dashboard as requested by the customer

3 Interfacing Requirements

- 3.1 Maintain a connection between the NECS and MBI data centres for a secure transfer of the consolidated data on a weekly basis.
- 3.2 Data Specification (MDS) – The customer will maintain a data specification containing the fields and definitions of the data to be processed and will proactively inform the supplier of any changes to the MDS prior to receiving data with changes included.
- 3.3 Data Transfer – The customer will provide timely transfer of a consolidated data file on a weekly basis containing data submissions from all providers.

4 **Security Requirements**

- 4.1 The Service Provider shall perform the Services accordance with the security requirements, including as set out in Schedule 2-17 (Security Accreditation).



ANNEX 2

SERVICE PROVIDER SOLUTION

MBI Health
A DNV COMPANY



LUNA NATIONAL
SERVICE & SUPPORT RENEWAL PROPOSAL
FOR NHS England
(on behalf of North of England CSU)

Ref: 1891019057
Date: 08/04/2025

LUNA^o

Remainder removed as commercially confidential

SCHEDULE 2-3

PERFORMANCE MANAGEMENT

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. DEFINITIONS

1.1. For the purposes of this Schedule, the following terms have the following meanings:

“Non-Core Hours” means Monday to Sunday between 18:00 and 08:00;

“Persistent Breach” means the Service Provider being liable to pay the equivalent monthly service charge to the Customer in Service Credits in respect of Availability of the Services falling below 97% in consecutive service periods.

“Rectification Time” means the period within which the Service Provider must Resolve the Service Incident.

“Scheduled Downtime” is the total period of Service Downtime which occurs with the prior written agreement of the parties.

2. PERFORMANCE MONITORING

2.1. The Service Provider shall monitor:

2.1.1. its performance against the Service Levels; and

2.1.2. the occurrence of any Service Incidents,

and shall report to the Customer on the same, including through the Performance Monitoring Reports, the Balanced Scorecard Report and Service Incident Reports in accordance with Schedule 2-7.

3. SERVICE CREDITS

3.1. For each Service Period:

3.1.1. the Service Points accrued shall be converted to a percentage deduction from the Operational Charges for the relevant Service Period on the basis of one point equating to a 0.1% deduction in the Operational Charges; and

3.1.2. the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times x \times OC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

x is 0.1%; and

OC is the total Operational Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.2. The liability of the Service Provider in respect of Service Credits shall be subject to the Service Credits Cap provided that the operation of the Service Credits Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of this Schedule 2-3.
- 3.3. Service Credits are a reduction of the Operational Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.4. Service Credits shall be shown as a deduction from the amount of Operational Charges due from the Customer to the Service Provider in the invoice for the Service Period immediately following the Service Period to which they relate and shall be credited to the Customer in accordance with paragraph 4.1.
- 3.5. The Customer shall be entitled to use the Performance Monitoring Reports, the Balanced Scorecard Report and Service Incident Reports referred to in Schedule 2-7, among other sources of information, to verify the calculation of Service Credits.

4. CALCULATING SERVICE CREDITS

- 4.1. The total amount of Service Credits that accrue to the Service Provider will be credited to the Customer monthly in arrears or as otherwise agreed by the Customer.
- 4.2. Service Credits shall not accrue to the extent that the underlying Performance Failure is a direct result of:
 - 4.2.1. a Customer Cause, in which case Clause 42 shall apply; or
 - 4.2.2. other Third Party Software or hardware that is not a component of the Services provided by the Service Provider.
- 4.3. Where the circumstances set out in paragraph 4.2.2 apply, within 7 calendar Days of the Performance Failure occurring the Service Provider shall inform the Customer in writing providing supporting evidence as is required to substantiate the claim and to prove to the reasonable satisfaction of the Customer that:
 - 4.3.1. the relief event in paragraph 4.2.2 applies; and
 - 4.3.2. but for the effects of such Third Party Software or hardware, the Service Provider would have provided the Services in accordance with this Contract.
- 4.4. On satisfying the above, the Service Provider shall be treated as though the Services had been performed in accordance with the terms of this Contract and the Customer shall not be entitled to apply Service Credits.
- 4.5. If a Performance Failure occurs that breaches more than one Service Level, Service Points (and therefore Service Credits) shall accrue in relation to each breached Service Level.

5. AVAILABILITY

- 5.1. The Service Provider shall monitor the Availability of the Services and shall report to the Customer on the performance of the same in accordance with the reporting requirements set out in Schedule 2-7 (Contract, Service Management and Reporting).
- 5.2. The Service Provider shall calculate Availability of the Services at the end of every Service Period during the Term using the following formula (and figures shall be rounded to the nearest one hundredth of a percentage point):

5.2.1.
$$\text{Availability} = ((\text{Operation Time} - \text{UnScheduled Downtime}) / (\text{Operation Time})) \times 100$$

Where “**Operation Time**” = Total number of minutes during the Contracted Hours in the relevant Service Period, excluding any used Scheduled Downtime; and

“**UnScheduled Downtime**” = Total number of minutes of Service Downtime during the Contracted Hours in the relevant Service Period.

5.3. The Service Provider shall only conduct Scheduled Downtime with the Customer's prior written consent (not to be unreasonably withheld or delayed), and unless otherwise agreed by the Customer, shall:

5.3.1. only conduct Scheduled Downtime during Non-Core Hours; and

5.3.2. ensure that such Scheduled Downtime is carried out at a time that will minimise any disruption to the Services.

5.4. UnScheduled Downtime shall begin at the earlier of the time at which:

5.4.1. the Service Provider identifies that the Services are either not fully operational or not fully functional; or

5.4.2. the Customer notifies the Services Provider that the Services are either not fully operational or not fully functional.

5.5. UnScheduled Downtime shall end when the parties agree in writing that the Services are fully operational and fully functional.

5.6. If at any time, a Service Incident is causing the End User material difficulties in carrying out its activities, the Customer may at its sole discretion by written notice to the Service Provider deem that UnScheduled Downtime has taken place.

6. AVAILABILITY SERVICE LEVELS AND SERVICE CREDITS

6.1. The Services shall be at least 98% Available. If the Service Provider achieves the Availability Service Level during a Service Period, no Service Points shall accrue to the Service Provider.

6.2. If the Service Provider does not achieve the Availability Service Level during a Service Period, Service Points (and therefore Service Credits) shall accrue to the Service Provider, subject to paragraph 4.2 above. The number of Service Points that shall accrue to the Service Provider for such Availability Performance Failure shall be the applicable number set out in paragraph 6.3 below.

6.3. If the Availability of the Services falls below 98%, the Service Provider will credit the Customer's next invoice in accordance with the appropriate Service Credit calculated in reference to the percentage bands set out in the table below.

Availability		Service Points
<98%	≥100%	0
<97%	≥99.97%	1
<96%	≥97.99%	2

7. SERVICE INCIDENTS AND SERVICE INCIDENT SERVICE LEVELS

- 7.1. The Service Provider shall monitor any Service Incidents and shall report to the Customer on the same in accordance with the reporting requirements set out in Schedule 2-7 (Contract, Service Management and Reporting) of this Contract.
- 7.2. In the event of a Service Incident, the Service Provider shall (without limitation) exercise all efforts and apply all appropriate resources in accordance with the categorisation of the Incident and assigned Severity Level.
- 7.3. The Customer shall categorise the appropriate Severity Levels in respect of Service Incidents, unless otherwise agreed in accordance with paragraph 9.2 below, which shall be derived from the categorisation of the Service Incident's urgency and impact in accordance with the following table:

		Service Incident Impact		
		High	Medium	Low
Service Incident Urgency	High	Severity Level 1	Severity Level 1	Severity Level 3
	Medium	Severity Level 1	Severity Level 2	Severity Level 4
	Low	Severity Level 2	Severity Level 2	Severity Level 4

Service Incident Urgency

- 7.4. The Customer shall determine the urgency of the Service Incident by selecting the highest relevant category from the table below.

Category	Description
High	- The damage caused by the Service Incident increases, or has the potential to increase, rapidly; - Work that cannot be completed by End Users as a result of the Service Incident is highly time sensitive (including reporting of data quality, investigation of issues at record level); - The issue has a clinical risk rating of 5 (in accordance with Clinical Risk Management Standard DCB0129 and associated guidance); or - A minor Service Incident can be prevented from becoming a more severe Service Incident by the Service Provider acting immediately.
Medium	- The damage caused by the Service Incident increases, or has the potential to increase, considerably over time; - The issue has a clinical risk rating of 3 (in accordance with Clinical Risk Management Standard DCB0129 and associated guidance); or - More than one End User is affected.
Low	The Service Incident is not high or medium urgency.

Service Incident Impact

- 7.5. The Customer shall determine the Service Incident's impact by selecting the highest relevant category from the table below.

Category	Description
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High	A Service Incident which, in the reasonable opinion of the Customer has, or has the potential to: • have a significant adverse impact on the provision of the applicable Services (including the solution described in the Service Provider Solution) to at least 30% (inclusive) of the End Users; or • have a minor adverse impact on the provision of the Services (including the solution described in the Service Provider Solution) to at least 50% (inclusive) of End Users; or • cause significant financial loss and/or disruption to an End User (including the Customer); or • result in any material loss or corruption of Customer Data, or in the provision of materially incorrect data to an End User; or • result in a Breach of Security as defined in Schedule 2-17 (Security Accreditation); or • materially negatively impact the reputation of the Customer. Non-exhaustive examples: • The Services are not Available to at least 30% (inclusive) of End Users. • The Services are Available, but one or more functions are malfunctioning to the extent that at least 50% (inclusive) of End Users cannot operate effectively.
Medium	A Service Incident which, in the reasonable opinion of the Customer has, or has the potential to: • have a significant adverse impact on the provision of the applicable Services (including the solution described in the Service Provider Solution) to less than 30% of End Users; or • have a minor adverse impact on the provision of the applicable Services (including the solution described in the Service Provider Solution) to between 20% and 50% (inclusive) of End Users; or • cause a financial loss and/or disruption to an End User (including the Customer) which is more than trivial but less severe than the significant financial loss described in the definition of a high impact Service Incident; or • result in any non-material loss or corruption of Customer Data, or in the provision of non-materially incorrect data to an End User; or • non-materially negatively impact the reputation of the Customer. Non-exhaustive examples: • The Services are not Available to less than 30% of End Users. • The Services are Available, but one or more functions are malfunctioning to the extent that between 20% and 50% (inclusive) of End Users cannot operate effectively.
Low	Any Service Incident that is not classified as an impact of high or medium. Non-exhaustive examples: • The Services are Available, but one or more functions are malfunctioning to the extent that less than 20% of End Users cannot operate effectively.

Service Incident Service Levels

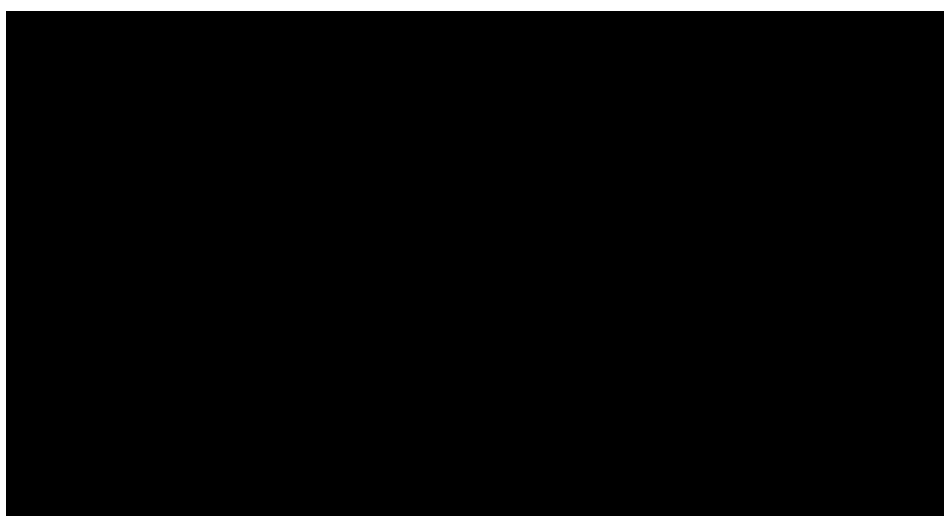
- 7.6. The Service Provider shall provide a Resolution for a Service Incident within the required Rectification Time (as set out in the table below) depending on the applicable Severity Level.

Severity Level	Categories of Service Incidents	Response Time	Rectification Time
1.	Critical failure / Loss of a critical component / application	2 hours	1 working day
2.	Moderate error	2 days	5 working days
3.	Minor error	5 days	10 working days

The service support model for the deployed LUNA solution is underpinned by a defined number of support days for the duration of the contract.



Service Support Framework



DEPENDENCIES

The service relies heavily on key dependencies required to be delivered by the Authority:

- Technology
 1. **Data Flow Link** – connection between the NECS and MBI data centres for a secure transfer of the consolidated data on a weekly basis.

- Data
 2. **Data Specification (MDS)** – a data specification containing the fields and definitions of the data to be processed.
 - a. MBI to be proactively informed in advance of any changes to the MDS prior to receiving data with changes included.
 3. **Data Transfer** – timely transfer of a consolidated data file on a weekly basis containing data submissions from all providers.
- User Requirements
 4. **Organisation Hierarchy** – definition of Provider, System, Regional and National level organisation hierarchy with names and codes of each organisation.
 5. **User Representatives** – contact details for representatives from each organisation who will have the authority to approve additional users from their organisation.

Calculating Rectification Time

- 7.7. The Rectification Time for a Service Incident will be calculated as the difference between the time the Customer notifies the Service Provider of the Service Incident and the time the Service Incident is documented as Resolved.

Resolving a Service Incident

- 7.8. A Service Incident shall be considered “**Resolved**” and closed when:
 - 7.8.1. the Service Provider provides a remedy for a Service Incident and the Services are being provided to the standard required under the Contract; or
 - 7.8.2. the Service Provider provides a Workaround to a Service Incident that restores the Services to at least the standard required under the Contract. In this case the following process applies:
 - (a) the Service Provider will provide details of the proposed Workaround (whether technical, through workflow adjustments or otherwise);
 - (b) the Customer, acting reasonably, approves the Service Provider proposed Workaround, or commences using a Workaround that restores the Services;
 - (c) the Service Provider and/or Customer shall forthwith apply the agreed Workaround, and restore the Services to at least the standard required under the Contract, on completion of which the Service Incident shall be deemed to be Resolved; and
 - (d) the Service Provider and the Customer shall then work together to find a permanent fix, to the extent necessary, to ensure that the Service Incident does not re-occur.
- 7.9. If a Service Incident is only partly attributable to the Service Provider, the Service Incident shall be Resolved when the Service Provider has Resolved (in accordance with paragraph 7.8) that part of the Service Incident that is attributable to the Service Provider.

8. SERVICE INCIDENT SERVICE CREDITS

- 8.1. If a Resolution for a Service Incident is provided within the applicable Rectification Time, then the Service Incident shall be deemed not to be a Performance Failure and Service Points shall not accrue.
- 8.2. Subject to paragraph 4.2, if a Service Incident occurs which is not Resolved within the Rectification Time then it shall be deemed a Service Incident Performance Failure for which Service Credits shall accrue, as follows.

Severity Level 1 – Critical Failure

Service Points

- 8.3. The Service Provider shall accrue ■ Service Points per hour for every hour (or part thereof) that the Service Incident is not Resolved beyond the Rectification Time.
- 8.4. In addition to applying the above Service Points, the Customer may:
 - 8.4.1. require the Service Provider to attend the meeting with a proposed Workaround for the Customer to review; and
 - 8.4.2. notify members of the Service Provider's senior management team, including the Service Provider's Contract Manager and/or the Service Provider's Chief Executive and require either or both individuals to attend the Customer's office on twenty four (24) hours' notice to discuss the Service Incident.
- 8.5. In the event that the Service Provider receives notification from the Customer of ■ Severity Level 1 Service Incidents in any ■ consecutive Service Periods, this shall be deemed a material breach and the Customer may terminate the Contract with immediate effect at any time within a year of the date of the third Severity Level 1 Service Incident. The Service Provider shall be responsible (without prejudice to the Customer's right to claim any other loss or damage) for the Customer's costs of re-procurement.

Severity Level 2 – Critical Component

Service Points

- 8.6. The Service Provider shall accrue ■ Service Points per hour for every hour (or part thereof) that the Service Incident is not Resolved beyond the Rectification Time.
- 8.7. In addition to applying the above Service Points, and in the event that the Service Provider receives notification from the Customer of ■ Severity Level 2 Service Incidents in any ■ consecutive Service Periods, the Customer may notify members of the Service Provider's senior management team, including the Service Provider's Contract Manager and/or the Service Provider's Chief Executive, and require either or both individuals to attend the Customer's office on reasonable notice to discuss the Service Incident.
- 8.8. In the event that the Service Provider receives notification from the Customer of five (5) or more Severity Level 2 Service Incidents in any ■ consecutive Service Periods, the Customer may terminate the Contract with immediate effect at any time within a year of the date of the fifth Severity Level 2 Service Incident. The Service Provider shall be responsible (without prejudice to the Customer's right to claim any other loss or damage) for the Customer's costs of re-procurement.

Severity Level 3 – Moderate Error

Service Points

- 8.9. The Service Provider shall accrue ■ Service Points per hour for every hour (or part thereof) that the Service Incident is not Resolved beyond the Rectification Time.
- 8.10. In the event that the Service Provider fails to resolve the Service Incident within ■ hours of the Service Incident being notified to the Service Provider, the Customer may notify members of the Service Provider's senior management team, including the head of service management, and require the Service Provider to attend the Customer's office on ■ notice in relation to the failure to resolve the Service Incident.

9. LOGGING A SERVICE INCIDENT

- 9.1. The Service incident logging process is established and live for all end users. The Dashboard contains links to Training & Support including service desk email address and phone number for logging of service issues. End users shall contact the Service Provider directly within ■ of any Service Incident being identified. End users are expected to log all Service Incidents via email or phone.
- 9.2. The Customer shall determine the Severity Level which relates to each Service Incident in accordance with paragraph 7.3 above. The Service Provider shall be entitled to challenge the Severity Level which is allocated by the Customer. Any such challenge shall not affect the obligations of the Service Provider to respond to the Service Incident in accordance with the Severity Level initially allocated by the Customer. If the Service Provider and the Customer are not able to agree on the Severity Level of a Service Incident, the matter shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure).
- 9.3. Outside the Working Days are not supported unless by exception to be agreed by the parties in the event that a Severity Level 1 or 2 Service Incident occurs.
- 9.4. The Service Provider shall log a Service Incident as soon as possible after it becomes aware of such Service Incident either through being notified by the End User or otherwise.
- 9.5. Where the Service Provider receives more than one report of a Service Incident then the first report shall be deemed to be the date and time that such Service Incident occurred.
- 9.6. The Service Provider, on receiving notification of each Service Incident, shall:
- 9.6.1. triage the notification and review the information provided by the Customer;
 - 9.6.2. document the action intended to be taken or which has been taken to Resolve the Service Incident; and
 - 9.6.3. document the Service Provider's plans for Resolving the Service Incident and/or for preventing the Service Incident from re-occurring including details where applicable of the estimated time within which such Service Incident will be Resolved.

10. KEY PERFORMANCE INDICATORS

- 10.1. The Service Provider shall provide the Services in accordance with the KPIs set out in paragraph 10.3 below. The Service Provider shall monitor the performance of the Services against the Key Performance Indicators and report such performance to the Customer in accordance with the reporting requirements set out in Schedule 2-7 (Contract, Service Management and Reporting).
- 10.2. If the Service Provider satisfies the KPIs during each Service Period, no Service Points shall accrue to the Service Provider. If the Service Provider does not satisfy the KPIs during a Service Period, Service Points (and therefore Service Credits) shall accrue to the Service Provider, subject to paragraph 4.2 above. The number of Service Points that shall accrue to the Service Provider for such KPI Performance Failure in each Service Period shall be the applicable number set out in paragraph 10.3 below.

10.3. Key Performance Indicators

No.	KPI	Definition	Service Points
KPI 1	Severity Level 1 – Critical Failure service incidents unresolved	((<i>Number of Severity Level 1 Critical Failure service incidents resolved</i>) / (<i>Number of Severity Level 1 Critical Failure service incidents reported</i>)) *100) ≥ 100%	
KPI 2	Severity Level 2 – Critical Failure service incidents unresolved	((<i>Number of Severity Level 2 Critical Failure service incidents resolved</i>) / (<i>Number of Severity Level 2 Critical Failure service incidents reported</i>)) *100) ≥ 100%	
KPI 3	Severity Level 3 – Critical Failure service incidents unresolved	((<i>Number of Severity Level 3 Critical Failure service incidents resolved</i>) / (<i>Number of Severity Level 3 Critical Failure service incidents reported</i>)) *100) ≥ 100%	

11. PERSISTENT BREACH AND THE PERFORMANCE IMPROVEMENT PLAN

- 11.1. In respect of any Persistent Breach by the Service Provider, or where the Service Provider has not resolved a Service Incident to the Customer's satisfaction, the Customer shall be entitled to notify members of the Service Provider's senior management.
- 11.2. Where the Customer considers, following notification in accordance with paragraph 11.1, that adequate steps have not been taken to remedy a Persistent Breach or Resolve a Service Incident, the Customer may notify the Service Provider's head of service management and require the Service Provider to provide the Customer with a draft Performance Improvement Plan for the on-going service issue.
- 11.3. The draft Performance Improvement Plan must set out:
 - 11.3.1. the actions that the Service Provider will take to remedy the Persistent Breach or Resolve the Service Incident in question and the date by which each action must be completed to achieve these objectives; and
 - 11.3.2. the criteria that apply in measuring whether the objectives of such Performance Improvement Plan to Resolve the Service Incident or remedy a Persistent Breach have been achieved to the Customer's reasonable satisfaction.
- 11.4. The Customer is required to approve the contents of the draft Performance Improvement Plan within five (5) Working Days of receipt from the Service Provider.
- 11.5. In the event that the Performance Improvement Plan is not approved by the Customer, acting reasonably, the Customer may convene a meeting with the Service Provider and/or such relevant third parties as the Customer may reasonably require to attend, to discuss the on-going Service Incident and/or Persistent Breach and the steps that are being taken, or ought to be taken, by the Service Provider to Resolve or remedy it. Any such meeting shall be at a time and location agreed by the parties acting reasonably.
- 11.6. Where the Service Provider fails to achieve the objectives of the relevant Performance Improvement Plan to Resolve the Service Incident or remedy the Persistent Breach within the agreed timescales, the Performance Improvement Plan Service Credit shall apply.

- 11.7. For the avoidance of doubt all applicable Service Levels shall continue to apply in addition to the Performance Improvement Plan Service Credit.
- 11.8. Where there are recurring escalations under this paragraph 11 or where the parties fail to agree the Performance Improvement Plan, the parties may escalate the matter in accordance with Schedule 2-10 (Dispute Resolution Procedure).

12. GOVERNMENT REVIEWS

- 12.1. The Service Provider acknowledges that the Services may be subject to Government review at key stages of the project. The Service Provider shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose.

SCHEDULE 2-4
CHARGES AND INVOICING

1. INTRODUCTION

- 1.1. This Schedule 2-4 details:
 - 1.1.1. the Charges for the Services; and
 - 1.1.2. the Invoicing Procedure that shall apply to the Services provided under this Contract.

2. GENERAL

- 2.1. The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 2.2. The Service Provider shall indemnify and hold harmless the Customer against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time on receipt of a written demand in respect of the Service Provider's failure to account for or to pay any Value Added Tax relating to payments made to the Service Provider under this Contract.
- 2.3. Any amounts due under paragraph 2.2 of this Schedule 2-4 shall be paid in cleared funds by the Service Provider to the Customer within five (5) Working Days of the Customer's receipt of a written demand.
- 2.4. If at any point during the Term the Service Provider reduces its charges for the Services offered under the Framework Agreement in accordance with the terms of the Framework Agreement, the Service Provider shall immediately notify the Customer and reduce the Charges for the Services under this Contract by the same amount.

3. CHARGES

3.1. Fixed Price

- 3.1.1. Any and all Charges that arise or become payable by the Customer to the Service Provider under or in connection with this Contract shall not exceed the price quoted by the Service Provider in the Pricing Schedule, except:
 - 3.1.1.1. as otherwise agreed by the parties in accordance with:
 - 3.1.1.1.1. the terms of this Contract (including for any Allowable Assumptions); or
 - 3.1.1.1.2. the Contract Change Procedure described in Schedule 2-8; or
 - 3.1.1.2. as a result of Indexation.
- 3.1.2. The Charges shall not be subject to Indexation during the first twelve (12) months following the Operational Services Commencement Date (the "**Non-Indexation Period**").
- 3.1.3. **REMOVED**
- 3.1.4. Except as varied in accordance with paragraph 3.1.1:
 - 3.1.4.1. neither the Charges nor any other costs, expenses, fees or charges shall be

adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Service Provider (or Sub-Contractors) of the performance of their obligations; and

- 3.1.4.2. the Charges shall not exceed the total of the Delivery Milestone Payments and the Operational Charges referred to in paragraphs 3.2 and 3.4 below.

3.2. Delivery Milestone Payments

The Customer shall pay the following Charges to the Service Provider on the terms agreed between the parties within ten (10) Working Days of the occurrence of the events identified below (the “Delivery Milestone Payments”):

Delivery Milestone	Event	Milestone Date	Delivery Milestone Payment Amount (£)	Milestone Retention Percentage (%)	Milestone Retention amount (£)	Milestone Retention Payment Event
M6	M6 - In Service Support and Service Stability	1 April 2025	£257,390.00	N/A	N/A	N/A

Release of Milestone Retentions

- 3.3. If the parties agree that a Milestone Retention payment event has occurred, the Service Provider shall be entitled to invoice the Customer for an amount equal to the total of all Milestone Retentions that relate to any of the Delivery Milestones identified in the table set out in paragraph 3.2 above.

Operational Charges

- 3.4. Subject to paragraph 3.5, the Customer shall pay the Operational Charges to the Service Provider on the terms agreed between the parties for the remainder of the Initial Term (and any Extension Period) as detailed in the Pricing Schedule and summarised in the table below.

Description	Operational Charges (£)	Frequency	In advance / In arrears
M6 - In Service Support and Service Stability	£257,390	Annually	

- 3.5. The Customer shall incur the Operational Charges from the Achievement of Milestone M5 but such incurred Operational Charges shall not be payable by the Customer, and the Service Provider shall not invoice for such Operational Charges, until the Service Provider Achieves Milestone M6 (In Service Support and Service Stability), whereupon the Service Provider may invoice the Customer for the outstanding Operational Charges to date (in accordance with paragraph 5 of this Schedule 2-4), and the Customer shall pay any undisputed invoices in accordance with paragraph 6 of this Schedule 2-4.

4. SERVICE CREDITS

- 4.1. Service Credits shall be calculated in accordance with the provisions of Schedule 2-3 (Performance Management).

5. INVOICING PROCEDURE

- 5.1. Prior to raising a purchase order ("PO") with the Service Provider, the Customer must first request a Unique Reference Number ("URN") from the Framework Authority (London Procurement Partnership). This URN will be unique to each individual and must be referenced on all PO's relating to this corresponding call off contract. This provides a clear audit trail linking the order back to both this specific call off contract and the overarching Framework Agreement.
- 5.2. When the Service Provider receives a PO from the Customer containing a URN linking the PO back to both this specific call off Contract and the overarching Framework Agreement, the Service Provider must quote the URN on the corresponding invoice.
- 5.3. Under the terms of the overarching Framework Agreement, London Procurement Partnership ("LPP") has the right to request copies of all PO's from the Customer and/or invoices from the Framework Service provider relating to a specific URN/s in order to ensure that LPP is accurately invoicing a given Framework Service Provider for the correct amount owed.
- 5.4. The Service Provider shall ensure that invoices it issues to the Customer in respect of the Charges (and any Termination Assistance Fees) include the following information:
- 5.4.1. the event to which the invoice relates and a summary of the corresponding Services provided;
 - 5.4.2. any Service Credits due;
 - 5.4.3. total value excluding Value Added Tax;

- 5.4.4. the Value Added Tax percentage;
- 5.4.5. the total value including Value Added Tax;
- 5.4.6. the tax point date relating to the rate of Value Added Tax shown; and
- 5.4.7. the URN provided by LPP.
- 5.5. The Service Provider shall demonstrate that the Charges (and any Termination Assistance Fees) have been properly and justifiably incurred and will provide evidence of the Charges (and any Termination Assistance Fees) to the Customer prior to issuing an invoice.
- 5.6. The Service Provider shall submit invoices directly to an authorised representative of the Customer.

6. INVOICE PAYMENT

- 6.1. The Service Provider shall accept payment of the Charges (and any Termination Assistance Fees) via electronic bank transfer. The Service Provider shall provide the Customer with bank details for BACS.
- 6.2. All undisputed invoices submitted by the Service Provider shall be payable by the Customer within thirty (30) Days of the date of receipt of the invoice, unless otherwise agreed by the parties.
- 6.3. In the event of an invoice being disputed by the Customer, the Customer shall make payment in respect of any undisputed amount in accordance with paragraph 6.2 and raise a dispute with the Service Provider as soon as practicable with a covering statement providing sufficient detail of the reason for any non-payment to enable the Service Provider to understand the nature of the dispute.
- 6.4. The Service Provider shall respond to the Customer within ten (10) Working Days of receipt of a disputed invoice stating whether or not the Service Provider accepts the Customer's dispute. If the Service Provider accepts the Customer's dispute then the Service Provider shall supply the Customer with a replacement valid invoice. If it does not accept the dispute then the matter shall be dealt with in accordance with the provisions of Clause 20 (Dispute Resolution) under the Contract.
- 6.5. Interest shall be payable on any late payments (which shall not include any disputed amounts) of the Charges (and any Termination Assistance Fees) under this Contract 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.

7. RISK REGISTER

- 7.1. The parties shall review the Risk Register set out in Annex 2 of this Schedule 2-4 (Charges and Invoicing) from time to time and as otherwise required for the purposes of paragraphs 8 and 9 of Schedule 2-27 (Governance).

8. ALLOWABLE ASSUMPTIONS

- 8.1. The Service Provider shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 8.2. During each Verification Period, the Customer shall provide the Service Provider with reasonable assistance and access to information within its possession or reasonable control and which the Customer deems is relevant to the Allowable Assumption being verified.

- 8.3. Within ten (10) Working Days of the end of each Verification Period, the Service Provider shall provide the Customer with a written report setting out the results of the Service Provider's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Pricing Schedule or the Implementation Plan require adjustment.
- 8.4. Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
 - 8.4.1. on the Pricing Schedule greater than the associated trigger for invocation, as set out in column 9 of the table in Annex 3; or
 - 8.4.2. on the Implementation Plan which would require adjustment under the Contract Change Procedure, as identified in column 3 of the table in Annex 3,

in which case paragraph 8.5 shall apply.
- 8.5. Where the parties agree that an Allowable Assumption is not accurate and the Pricing Schedule and/or Implementation Plan require adjusting:
 - 8.5.1. the Service Provider shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Pricing Schedule and/or the Implementation Plan;
 - 8.5.2. the Service Provider may (subject to paragraph 8.5.3) propose a change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Contract Change Procedure; and
 - 8.5.3. where the Service Provider proposes a change to the Charges under paragraph 8.5.2, the Change Request shall reflect the requirements of the table in Annex 3, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 3.

9. PAYMENTS FOR DELAYS DUE TO CUSTOMER CAUSE

- 9.1. If the Service Provider is entitled in accordance with Clause 42.2.3.3(D) to compensation for failure to Achieve a Delivery Milestone by its Milestone Date, then, subject always to Clause 14 (Limitations on Liability), such compensation shall be determined in accordance with the following principles:
 - (a) the compensation shall reimburse the Service Provider for additional costs reasonably incurred by the Service Provider that the Service Provider:
 - (i) can demonstrate it has incurred solely and directly as a result of the Customer Cause; and
 - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 42 (Customer Responsibilities); and
 - (b) the compensation shall not operate so as to put the Service Provider in a better position than it would have been in but for the occurrence of the Customer Cause.
- 9.2. The Service Provider shall provide the Customer with any information the Customer may require in order to assess the validity of the Service Provider's claim to compensation.

Annex 1

Pricing Schedule



Annex 2

Risk Register

Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Post-mitigation impact (£)	Forecast Contingency Costs	Owner

Annex 3
Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Service Provider will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Pricing Schedule may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)
	A single consolidated set of Trust & ISP data will be made available to MBI on a weekly basis in an MS SQL database table, csv or similar.	High	High				Confirmed data transfers		Contract term
	The Solution will be hosted in a Cloud and Microsoft Power BI and Azure environment	Medium	Low				Product review		Contract term
	The solution supports the export of data to Excel by front end users up to 150,000 rows of data. Export of reports / charts etc to PDF and PowerPoint is included.	High	Low				Product review		Contract term
	User access hierarchy will be based on	High	High				Product review		Contract term

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Service Provider will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Pricing Schedule may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)
	Provider/System/Regional/National levels only								
	ISP users will not have access to view NHS Organisations. Only regional and national NHS users will have access to ISP data.	High	High				Product review		Contract term
	Definition of milestone M6 - In Service Support and Service Stability is equivalent to PM1 Service Provision and Support for 1 April 2025 to 31 March 2026 as described in provider response documentation	High	High				Contract/Service review		Contract term

SCHEDULE 2-5

IMPLEMENTATION

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1. IMPLEMENTATION

- 1.1. If required by the Customer, both parties shall co-operate and perform all their obligations under this Contract in relation to the Implementation Services in accordance with the Implementation Plan.

2. IMPLEMENTATION PLAN

- 2.1. The Implementation Plan is set out in Annex 1 to this Schedule 2-5.
- 2.2. Subject to paragraph 4.2, all changes to the Outline Implementation Plan and the Detailed Implementation Plan shall be subject to the Contract Change Procedure, as set out in paragraphs 3 and 4.1 below, provided that the Service Provider shall not attempt to postpone any of the Delivery Milestones using the Contract Change Procedure or otherwise in bad faith.

3. ADOPTION OF THE DETAILED IMPLEMENTATION PLAN

- 3.1. The Service Provider shall submit a draft of a Detailed Implementation Plan (to replace the Outline Implementation Plan) to the Customer for approval within sixty (60) Days of the Effective Date.
- 3.2. In preparing the Detailed Implementation Plan, the Service Provider shall conduct a further due diligence exercise to confirm the identity of and examine all relevant Sites, Customer Furnished Items, assets, Operating Environments and the Customer's contracts with third parties (including any Assumed Contracts) and the Customer shall provide the Service Provider with all reasonable assistance in conducting such exercise.
- 3.3. If the Detailed Implementation Plan identifies any Customer Furnished Items or Customer assets then the Customer shall, as from the date agreed in the Detailed Implementation Plan, transfer the Customer Furnished Items and Customer assets to the Service Provider. Any transfer (whether by way of sale, licence or sub-licence) of Customer Furnished Items or Customer assets made by the Customer to Service Provider under this Schedule is made on an "as is" basis. The Customer excludes all representations (unless fraudulent), warranties and conditions and other contractual terms howsoever arising whether by statute, common law or otherwise and whether express or implied (except that the items are free from encumbrances) to the maximum extent permitted by applicable law in relation to those Customer Furnished Items and Customer assets.
- 3.4. The Service Provider shall ensure that the draft Detailed Implementation Plan, at a minimum:
- 3.4.1. includes all of the Delivery Milestones and Milestone Dates set out in the Outline Implementation Plan and all of the Milestone Achievement Criteria (set out in Schedule 2-6);
- 3.4.2. includes (as a minimum) the Service Provider's proposed timescales in respect of the following for each of the Delivery Milestones:
- 3.4.2.1. the completion of each deliverable under the Contract (for example, all design documents);
- 3.4.2.2. the completion of the system configuration and build phase;

- 3.4.2.3. the completion of any testing to be undertaken in accordance with the acceptance testing procedures set out in Schedule 2-6;
 - 3.4.2.4. training and roll-out activities; and
 - 3.4.2.5. the successful go-live of the Services;
- 3.4.3. clearly outlines all the steps and task predecessors required to implement the Delivery Milestones to be achieved in the next fifteen (15) months;
- 3.4.4. clearly outlines all review and approval activities in relation to testing and acceptance of Delivery Milestones, in accordance with the procedures set out in Schedule 2-6;
- 3.4.5. clearly outlines the required roles and responsibilities of both parties, including staffing requirements;
- 3.4.6. includes the date by which the Service Provider shall prepare the Security Management Plan, as referred to in paragraph 6.5 of Schedule 2-17 (Security Accreditation); and
- 3.4.7. clearly lists any Customer Furnished Items and assets to be transferred to the Service Provider in accordance with paragraph 3.3 of this Schedule, and any Assumed Contracts to be transferred, in accordance with Clause 59.
- 3.5. Prior to the submission of the draft Detailed Implementation Plan to the Customer in accordance with paragraph 3.1, the Customer shall have the right:
 - 3.5.1. to review any documentation produced by the Service Provider in relation to the development of the Detailed Implementation Plan, including:
 - 3.5.1.1. details of the Service Provider's intended approach to preparing the Detailed Implementation Plan and its development;
 - 3.5.1.2. copies of any drafts of the Detailed Implementation Plan produced by the Service Provider; and
 - 3.5.1.3. any other work in progress in relation to the Detailed Implementation Plan; and
 - 3.5.2. to require the Service Provider to include any reasonable changes or provisions to include in the draft Detailed Implementation Plan.
- 3.6. Following receipt of the draft Detailed Implementation Plan from the Service Provider, the Customer shall:
 - 3.6.1. review the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.6.2. by no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Customer, notify the Service Provider in writing that either:
 - 3.6.2.1. the Detailed Implementation Plan is in a form that is acceptable to the Customer; or
 - 3.6.2.2. the Customer rejects the draft Detailed Implementation Plan.
- 3.7. If the Customer rejects the draft Detailed Implementation Plan:
 - 3.7.1. the Customer shall inform the Service Provider in writing of its reasons for its rejection; and

- 3.7.2. the Service Provider shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Customer (for the Customer to review) within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraph 3.6 and this paragraph 3.7 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either party may refer any disputed matters for resolution in accordance with Schedule 2-10 (Dispute Resolution Procedure) at any time.
- 3.8. If the Customer notifies the Service Provider that the draft Detailed Implementation Plan is in a form that is acceptable, the Service Provider shall submit a draft Contract Change Note (CCN) to the Customer to effect the replacement of the Outline Implementation Plan with the acceptable form of the Detailed Implementation Plan and such CCN shall be agreed in accordance with the Contract Change Procedure.

4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 4.1. Following the adoption of the Detailed Implementation Plan:
- 4.1.1. the Service Provider shall submit a revised Detailed Implementation Plan to the Customer every six (6) months, starting six (6) months from the CCN Effective Date of the Contract Change Note adopting the previous version of the Detailed Implementation Plan;
- 4.1.2. without prejudice to paragraph 4.1.1, the Customer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Service Provider and the Service Provider shall submit a draft revised Detailed Implementation Plan to the Customer within twenty (20) Working Days of receiving such a request from the Customer (or such longer period as the parties may agree provided that any failure to agree such longer period shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure));
- 4.1.3. any revised Detailed Implementation Plan shall (subject to paragraph 4.2) be submitted by the Service Provider for adoption in accordance with the procedure set out in paragraphs 3.6 to 3.8; and
- 4.1.4. the Service Provider's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board. In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Service Provider to the Customer not less than five (5) Working Days in advance of such meetings.
- 4.2. Save for any amendments which are of a type identified and notified by the Customer (at the Customer's discretion) to the Service Provider in writing as not requiring adoption via the Contract Change Procedure, any material amendments to the Detailed Implementation Plan shall be subject to the Contract Change Procedure. Any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments. Subject to Clause 42.2.3.3, in no circumstances shall the Service Provider be entitled to alter or request an alteration to any Milestone Date.

5. TESTING AND ACCEPTANCE OF DELIVERY MILESTONES

- 5.1. The parties shall comply with the provisions of Schedule 2-6 (Acceptance Procedures) in relation to the procedures to determine whether the Milestone Achievement Criteria have been satisfied and whether a Delivery Milestone is capable of being accepted by the Customer.

6. SERVICE PROVIDER'S FAILURE TO MEET DEADLINES

- 6.1. In the event that the Service Provider fails (or is likely to fail in the Service Provider's reasonable opinion, or is notified by the Customer that is likely to fail in the Customer's reasonable opinion),

due to Service Provider's Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, including failure to Achieve a Delivery Milestone by the relevant Milestone Date, the Service Provider shall notify the Customer in writing of such failure (or potential failure) including full details of the reasons for and consequences of the delay and, at the request of the Customer and without prejudice to the Customer's other rights and remedies:

- 6.1.1. pay any Liquidated Damages in accordance with Schedule 2-15 (Liquidated Damages) (if the Service Provider fails to Achieve a Delivery Milestone by its Milestone Date as a result of the Service Provider's Default);
 - 6.1.2. arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Customer; and
 - 6.1.3. take all reasonable steps necessary to eliminate or mitigate the consequences of the delay, including submitting and agreeing a Remediation Plan (covering those aspects for which the Service Provider is responsible) with the Customer in accordance with the Remediation Plan Process.
- 6.2. In the event that any obligation of the Service Provider specified in the Implementation Plan is (or is likely to become in the Service Provider's reasonable opinion) delayed as a result of a Customer Cause then Clause 42 shall apply.
- 6.3. Time shall be of the essence in relation to any of the Delivery Milestones set out in the table in paragraph 2.2 of Schedule 2-15 (Liquidated Damages).

Part A – Implementation Plan

Part B – Delivery Milestone Details

Delivery Milestone		Deliverables (bulleted list showing all deliverables (and associated tasks) required for each Delivery Milestone. Each entry should reference the more detailed descriptions of each of the deliverables by reference to the table set out in Part C of this Annex 1 below.)	Duration (Working Days)	Milestone Date
M1	Service Provision and Support for 1 April 2025 to 31 March 2026	Service Provision and Support for 1 April 2025 to 31 March 2026		

Part C – Detailed Deliverables Descriptions

Reference	Deliverable	Description	Quality Criteria
		Provision of Data Quality Dashboard for 1 year. [REDACTED] [REDACTED]	

SCHEDULE 2-6

ACCEPTANCE PROCEDURES

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1 This Schedule specifies the Acceptance Tests and the Acceptance Test Criteria to be used for the acceptance of the Services and Goods by the Customer.

2. ACCEPTANCE PROCEDURES

- 2.1 The Service Provider shall, during the Acceptance Test Period, make available to the Customer the Goods and Services (including any materials supplied by the Service Provider necessary to enable the provision of the Services) and any test scripts and/or test data to enable the Customer to perform the Acceptance Tests.
- 2.2 The Customer will conduct Acceptance Tests on the Services and any Goods to test whether the appropriate Acceptance Test Criteria are met.
- 2.3 An Acceptance Test shall be recorded as Achieved if the Customer is satisfied that all the relevant Acceptance Test Criteria are met and the Customer issues a Test Certificate to notify the Service Provider that the applicable Acceptance Test has been Achieved.
- 2.4 An Acceptance Test shall be recorded as unsuccessful and the Service Provider notified accordingly if the Customer determines that any of the relevant Acceptance Test Criteria are not met.
- 2.5 In the event that the Acceptance Tests in respect of the Services or any part thereof, have not been Achieved pursuant to paragraph 2.4 of this Schedule by the end of the relevant Acceptance Test Period, the Customer may extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the Service Provider shall correct the faults which caused the Acceptance Tests to be recorded as unsuccessful, whereupon the Customer shall re-perform the Acceptance Tests.
- 2.6 In the event that after the Customer has extended the Acceptance Test Period pursuant to paragraph 2.5 of this Schedule, the relevant Acceptance Tests have not been Achieved by the end of that period, the Customer shall, without prejudice to its other rights and remedies, be entitled to:
- 2.6.1 issue a Test Certificate conditional upon the remediation of the issues;
- 2.6.2 where the parties agree that there is sufficient time prior to the relevant Milestone Date, extend the Acceptance Test Period for a further period (or periods) specified by the Customer during which the Service Provider shall correct the faults which caused the Acceptance Tests to be recorded as unsuccessful and the Customer shall re-perform the Acceptance Tests; or
- 2.6.3 reject the Services, terminate this Contract and receive a refund of all sums paid under this Contract relating to the rejected Services.
- 2.7 Where the failure to satisfy the Acceptance Test Criteria results, or is likely to result, in the failure (in whole or in part) by the Service Provider to meet a Milestone Date, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 21.1 (Remediation Plan Process).
- 2.8 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Service Provider any reasonable additional costs it may incur as a direct result of further review or re-testing pursuant to paragraph 2.6.2 which is required for the Acceptance Test Criteria to be satisfied.

- 2.9 The Acceptance Procedures set out in paragraph 2 of this Schedule shall apply to each of the phases of testing and each of the Milestone Achievement Criteria set out in paragraphs 3 and 4 of this Schedule respectively (unless stated otherwise in paragraphs 3 or 4).
- 2.10 The right to reject and terminate in paragraph 2.6.3 of this Schedule shall apply to each element of the Services so that the Customer can reject and terminate parts of the Service rather than the entire Services if it so wishes. If the Customer only terminates the rejected part of the Services the refund referred to in paragraph 2.6.3 of this Schedule shall be in respect of the part of the Service so rejected.
- 2.11 The Service Provider shall provide such assistance as the Customer requires in relation to the conducting of the Acceptance Tests and the Acceptance Procedures.
- 2.12 During the implementation/rollout phase (as further described in paragraph 3 of this Schedule), the Customer reserves the right to re-test any element of the Services or Goods which failed the Acceptance Tests conducted in the previous testing phase (as further described in paragraph 3 of this Schedule) even if such element of the same subsequently passed the Acceptance Test and was signed off by the Customer. In the event of such re-test, the Customer shall have all rights and remedies set out in the Contract.

Issue of a Milestone Achievement Certificate

- 2.13 The Customer shall issue a Milestone Achievement Certificate in respect of a given Delivery Milestone as soon as is reasonably practicable following:
- 2.13.1 the Customer issuing all Test Certificates (and/or conditional Test Certificates) in respect of all elements of the Services and Goods (including deliverables and any other criteria) related to each Delivery Milestone which are due to be tested; and
- 2.13.2 performance by the Service Provider to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Delivery Milestone (which may include the submission of a deliverable that is not due to be tested, such as the production of Documentation).
- 2.14 The grant of a Milestone Achievement Certificate shall entitle the Service Provider to the receipt of a payment in respect of that Delivery Milestone in accordance with the provisions of Schedule 2-4 (Charges and Invoicing).
- 2.15 If a Delivery Milestone is not Achieved, the Customer shall promptly issue a report to the Service Provider setting out the issues and reasons explaining why the relevant Delivery Milestone was not Achieved.
- 2.16 The Customer may at its discretion (without prejudice to any other rights under this Contract) choose to issue a Milestone Achievement Certificate conditional on the remediation of any issues in accordance with an agreed Remediation Plan provided that:
- 2.16.1 any Remediation Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Customer agrees otherwise (in which case the Service Provider shall submit a Remediation Plan for approval by the Customer in accordance with the Remediation Plan Process set out in Clause 21); and
- 2.16.2 where the Customer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

Risk

- 2.17 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- 2.17.1 operate to transfer any risk that the relevant deliverables or Delivery Milestone is complete or will meet and/or satisfy the Customer's requirements for that deliverable or

Delivery Milestone; or

2.17.2 affect the Customer's right subsequently to reject:

2.17.2.1 all or any element of the deliverables to which a Test Certificate relates; or

2.17.2.2 any Delivery Milestone to which the Milestone Achievement Certificate relates.

2.18 Notwithstanding the issuing of any Milestone Achievement Certificate, the Service Provider shall remain solely responsible for ensuring that:

2.18.1 the solution produced in accordance with the Service Provider Solution is designed and developed, and is suitable for the delivery of the Services and meets the Customer's requirements; and

2.18.2 the Services are implemented in accordance with this Contract.

3. ACCEPTANCE TEST CRITERIA

3.1 The table in this paragraph 3.1 sets out the Acceptance Test Criteria that the Customer must be satisfied have been met in order for the Customer to issue a Test Certificate to notify the Service Provider that the applicable Acceptance Test for the applicable element of the Services has been Achieved. When all Acceptance Tests for each element of the Services attributed to a Delivery Milestone (as set out in paragraph 4) are Achieved, the Customer shall issue the Service Provider with a Milestone Achievement Certificate for that Delivery Milestone in accordance with paragraph 2.11 above.

Ref	Services to which the Acceptance Test applies	Pre-Conditions	Acceptance Period	Test	Acceptance Criteria

4. MILESTONE ACHIEVEMENT CRITERIA

Delivery Milestone		Milestone Achievement Criteria
M6	In Service Support and Service Stability	<i>Data Quality Dashboard live for End User access</i>

ANNEX 1
Milestone Achievement Certificate

To: **[NAME OF SERVICE PROVIDER]**

From: **[NAME OF CUSTOMER]**

[Date]

Dear Sir/Madam,

MILESTONE ACHIEVEMENT CERTIFICATE

Delivery Milestone: **[insert description of Delivery Milestone]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Customer]** (the “**Customer**”) and **[name of Service Provider]** (the “**Service Provider**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in the Contract.

[We confirm that all the Acceptance Test Criteria relating to Delivery Milestone [number] have been tested successfully in accordance with the Acceptance Test relevant to this Delivery Milestone.]*

OR

[This Milestone Achievement Certificate is granted pursuant to paragraphs 2.13-2.17 of Schedule 2-6 (Acceptance Procedures) of the Contract on the condition that any issues are remedied in accordance with the Remediation Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Delivery Milestone Payment associated with this Delivery Milestone in accordance with the provisions of Schedule 2-4 (Charges and Invoicing).]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[Customer]**

ANNEX 2
Test Certificate

To: **[NAME OF SERVICE PROVIDER]**

From: **[NAME OF CUSTOMER]**

[Date]

Dear Sir/Madam,

TEST CERTIFICATE

Deliverables: **[insert description of deliverables]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Customer]** (the “**Customer**”) and **[name of Service Provider]** (the “**Service Provider**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in the Contract.

We confirm that the deliverables listed above have been tested successfully in accordance with the Acceptance Test relevant to those deliverables.

This Test Certificate is issued pursuant to paragraph 2.3 of Schedule 2-6 (Acceptance Procedures) of the Contract.

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Customer]**

SCHEDULE 2-7

CONTRACT, SERVICE MANAGEMENT & REPORTING

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. SERVICES MANAGEMENT

- 1.1. The Service Provider shall provide the Customer and the Customer's other suppliers (as are notified to the Service Provider periodically, including any Replacement Service Provider) at any time during the Term such reasonable co-operation, data, information (including any Documentation to the extent that does not require the Service Provider to disclose its Confidential Information), advice and assistance to allow the Customer (and its other suppliers) to create and maintain technical or organisational interfaces with the Services, including by ensuring that the Interfacing Requirements are satisfied.
- 1.2. In respect of network, communications, computer or other equipment provided by a third party that do or are required to interface with the Service Provider System, the Service Provider shall cooperate with such third parties and use reasonable endeavours to ensure that this interfacing does not cause any disruption to the provision of the Services.
- 1.3. Any change:
 - 1.3.1. in the manner, methods or systems in which the Service Provider provides the Services which may detrimentally affect the Customer's use of the Services;
 - 1.3.2. materially increases the Customer's risk or reduces the effect of the governance provisions of the Contract (including those set out in Schedule 2-27 (Governance)); and/or
 - 1.3.3. to the Interfacing Requirements,shall be agreed via the Contract Change Procedure.
- 1.4. The Service Provider shall ensure that any new releases and Updates of the Software:
 - 1.4.1. comply with the interface requirements referred to in this Schedule 2-7 and the Interfacing Requirements set out in Schedule 2-2 (Service Specification);
 - 1.4.2. to the extent that such releases and Updates are material and/or have the potential to materially affect the Customer's use of the Services, are notified to the Customer at least three (3) months before the release of any new Software or Update to the Software; and
 - 1.4.3. are co-ordinated with the Customer to ensure it minimises any disruption to the Services, the ICT Environment or the Customer's operations.
- 1.5. The Service Provider hereby acknowledges and agrees that it is responsible for, and shall bear the cost of, any Updates to or patching of the Software, and that such activities form part of the Services and have been factored into the Charges.

2. PERFORMANCE MONITORING

- 2.1. The Service Provider shall ensure that the Services and its performance of the same is measured consistently, including through the preparation of the Performance Monitoring Reports, the Balanced Scorecard Reports and Service Incident Reports, in order to:
 - 2.1.1. provide data to allow the Customer to monitor the Service Provider's performance against the Service Levels;

- 2.1.2. enable the pro-active management of the Services;
- 2.1.3. verify if the Service Provider is complying with the Service Levels; and
- 2.1.4. document any issues in the Service Provider's performance and/or delivery of the Services.

3. PERFORMANCE REVIEW

- 3.1. Within five (5) Working Days of the end of each Service Period, the Service Provider shall provide:
 - 3.1.1. a report to the Customer which includes the performance by the Service Provider against the Service Levels (the "**Performance Monitoring Report**") as more particularly described in paragraph 3.2; and
 - 3.1.2. a report created by the Service Provider to the Customer's senior responsible officer which summarises the Service Provider's performance over the relevant Service Period (the "**Balanced Scorecard Report**") as more particularly described in paragraph 3.3.

Performance Monitoring Report

- 3.2. The Performance Monitoring Report shall be in such format as agreed between the parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 3.2.1. for each Service Level, the actual performance achieved over the applicable Service Period;
- 3.2.2. a summary of all Performance Failures that occurred during the Service Period;
- 3.2.3. any Performance Failures which remain outstanding and the progress in resolving them;
- 3.2.4. the status of any outstanding Remediation Plan processes, including:
 - 3.2.4.1. whether or not a Remediation Plan has been agreed by the parties; and
 - 3.2.4.2. if a Remediation Plan has been agreed, a summary of the Service Provider's progress in implementing that Remediation Plan;
- 3.2.5. for any repeated Performance Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.2.6. the number of Service Points awarded in respect of each Performance Failure;
- 3.2.7. the Service Credits to be applied, indicating the Performance Failure to which the Service Credits relate;
- 3.2.8. the conduct and performance of any agreed periodic tests that have occurred;
- 3.2.9. relevant particulars of any aspects of the Service Provider's performance which fail to meet the requirements of this Contract;
- 3.2.10. such other details as the Customer may reasonably require from time to time; and

Information in respect of previous Service Periods

- 3.2.11. a rolling total of the number of Performance Failures and Service Incidents (and the applicable Severity Levels) that have occurred over the past six (6) Service Periods;
- 3.2.12. the amount of Service Credits that have been incurred by the Service Provider over the past six (6) Service Periods;
- 3.2.13. the conduct and performance of any agreed periodic tests that have occurred in such Service Periods; and

Information in respect of the next Quarter

- 3.2.14. any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Customer and the Service Provider for the next Quarter.

Balanced Scorecard Report

- 3.3. The Balanced Scorecard Report shall be presented in the form of a report at operational service meetings and, as a minimum, shall contain a high level summary of the Service Provider's performance over the relevant Service Period, including details of the following:
 - 3.3.1. financial indicators;
 - 3.3.2. the Service Levels achieved;
 - 3.3.3. behavioural indicators;
 - 3.3.4. performance against its obligation to pay its Sub-Contractors within thirty (30) Days of receipt of an undisputed invoice;
 - 3.3.5. performance against its obligation to pay third parties that are not Sub-Contractors but where there is an agreement with the Service Provider that is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017 within sixty (60) Days of receipt of an invoice;
 - 3.3.6. Delivery Milestone trend chart, showing performance of the overall programme;
 - 3.3.7. sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy;
 - 3.3.8. social value (as applicable); and
 - 3.3.9. any other content that the Customer may include in accordance with paragraph 6.2 that is provided in response to a Satisfaction Survey.
- 3.4. The Performance Monitoring Reports and the Balanced Scorecard Reports shall be reviewed, and their contents agreed by the parties, at the next Performance Review Meeting held in accordance with paragraph 3.5.
- 3.5. Following the Achievement of Milestone M5 (Go-Live), the parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 3.5.1. take place within five (5) Working Days of the Performance Monitoring Report being issued by the Service Provider;
 - 3.5.2. take place at such location and time (within normal business hours) as the Customer shall reasonably require (unless otherwise agreed in advance); and

- 3.5.3. be attended by representatives of the Service Provider and the Customer of appropriate levels seniority and experience.
- 3.6. The Customer shall be entitled to raise any additional questions and/or request any further information from the Service Provider regarding any Performance Failure or Service Incident.

4. SERVICE INCIDENT REPORTS

- 4.1. The Service Provider shall be responsible for monitoring the Service Incidents in relation to the Services and shall provide the Customer with a Service Incident Report within five (5) Working Days of the end of each Service Period summarising the following:
- 4.1.1. a record of any failures to provide the Services in accordance with this Contract including a summary of all Service Incidents that occurred during the previous Service Period;
 - 4.1.2. a record of any Service Incidents which remain outstanding and the progress in resolving them and those which have been excluded in accordance with paragraph 4.4 of Schedule 2-3 (Performance Management);
 - 4.1.3. the Severity Level of any Service Incident(s) that occurred during the previous Service Period;
 - 4.1.4. for any repeated Service Incidents, actions taken to resolve the underlying cause and prevent recurrence;
 - 4.1.5. a rolling total of the number of Service Incidents that have occurred, and the amount of related Service Credits that have been incurred by the Service Provider over the preceding six (6) months; and
 - 4.1.6. details of the number and nature of any complaints from the Customer.

5. TRANSPARENCY REPORTS:

- 5.1. The Service Provider recognises that the Customer 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 Service Provider shall comply with the provisions of this Schedule in order to assist the Customer with its compliance with its obligations under that PPN.
- 5.2. Without prejudice to the Service Provider's reporting requirements set out in this Contract, within of the timeframes specified below from the Effective Date the Service Provider shall submit to the Customer for approval (such approval not to be unreasonably withheld or delayed) draft reports detailing certain performance information relating to the Service Provider as the Customer may reasonably request ("**Transparency Reports**") consistent with the content requirements and format set out below in this Schedule.
- 5.3. If the Customer rejects any proposed Transparency Report submitted by the Service Provider, the Service Provider shall submit a revised version of the relevant report for further approval by the Customer 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 Customer. If the parties fail to agree on a draft Transparency Report the Customer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a dispute.
- 5.4. The Service Provider shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency set out below.

List of Transparency Reports

Title	Content	Format	Frequency
Availability		PDF	Monthly
Performance Management		PDF	Monthly

6. SATISFACTION SURVEYS

- 6.1. In order to assess the level of performance of the Service Provider, the Customer may undertake satisfaction surveys at least once per year in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:
- 6.1.1. meeting Customer needs;
 - 6.1.2. usability
 - 6.1.3. quality of relationship;
 - 6.1.4. security concerns;
 - 6.1.5. clinical safety concerns;
 - 6.1.6. impact on staff productivity; and/or
 - 6.1.7. other suggestions for improvements to the Services.
- 6.2. The Customer shall, acting reasonably, reflect in the Balanced Scorecard Report any aspects of the Service Provider’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not delivering the Services in accordance with the Customer’s requirements under this Contract.

7. PERFORMANCE RECORDS

- 7.1. The Service Provider shall keep appropriate documents and records (including any staff records, timesheets, training programmes, staff training records, Goods received documentation, supplier accreditation records and complaints received) in relation to the Services. Without prejudice to the generality of the foregoing, the Service Provider shall maintain accurate records for a minimum of twelve (12) months and provide prompt access to such records to the Customer upon the Customer’s request. The records and documents of the Service Provider shall be available for inspection by the Customer and/or its nominee at any time and the Customer and/or its nominee may make copies of any such records and documents.
- 7.2. In addition to the requirement in paragraph 7.1 to maintain appropriate documents and records, the Service Provider shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Service Provider both before and after each Operational Services Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 7.3. The Service Provider shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Customer are available to the Customer on-line and are capable of being printed.

8. PERFORMANCE VERIFICATION

- 8.1. The Customer reserves the right to verify the Availability of the Services and the Service Provider's performance under this Contract against the Service Levels including by sending test transactions through the ICT Environment or otherwise.

9. RISK MANAGEMENT

- 9.1. The parties shall identify and manage risks relating to the performance of the Services and the Service Management Board shall monitor completeness and progress in accordance with paragraph 8 of Schedule 2-27 (Governance).

SCHEDULE 2-8

CONTRACT CHANGE PROCEDURE

1. INTRODUCTION

- 1.1. This Schedule sets out the Contract Change Procedure to be used by the Customer and the Service Provider to effect changes to this Contract.
- 1.2. In accordance with Clause 8.1 of the Contract, changes to Sub-Contractors shall be subject to Clause 32.3 of the Contract.
- 1.3. In accordance with Clause 8.2 of the Contract, only changes to the Contract required by a Specific Change in Law (other than Specific Changes in Law as referred to in Clause 8.2.2) shall be implemented in accordance with the Contract Change Procedure.

2. PRINCIPLES

- 2.1. The Customer and the Service Provider shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold nor delay consent to the other party's proposed changes to this Contract.
- 2.2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall continue to provide and make available to the Customer the Services in accordance with this Contract.
- 2.3. Any work undertaken in connection with any changes to this Contract by the Service Provider, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule) shall be undertaken entirely at the expense and liability of the Service Provider unless otherwise agreed between the Customer and the Service Provider in advance.
- 2.4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed changes to this Contract, including the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

3. PROCEDURE

- 3.1. Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change and the reason for the proposed change (a "**Change Request**") to the other party using the proforma at Annex A to this Schedule or such other document agreed by the parties that makes it clear it is a Change Request related to this Contract.
- 3.2. The Service Provider shall, at its own cost and expense, prepare a draft Impact Assessment for the Customer as soon as reasonably practicable (and in any event within ten (10) Working Days of the date of receiving, or five (5) Working Days of issuing, the Change Request, unless otherwise agreed by the parties), which shall detail the impact of the Change Request, including:
 - 3.2.1. details of the proposed change, including the reason for the change;
 - 3.2.2. details of the impact of the proposed change on the Services and the Service Provider's ability to meet its other obligations under this Contract;
 - 3.2.3. any variation to the terms of this Contract that will be required as a result of that impact, including changes to the Services Specification and/or the Service Levels;

- 3.2.4. a detailed estimate of the cost of implementing the proposed change;
 - 3.2.5. a detailed estimate of the ongoing costs required by the proposed change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either party and any alteration to the working practices of either party;
 - 3.2.6. a timetable for the implementation, together with any proposals for the testing of the change (if applicable);
 - 3.2.7. details of how the proposed change will ensure compliance with applicable Law; and
 - 3.2.8. such other information as the Customer may reasonably request in (or in any response to) the Change Request.
- 3.3. On receipt from the Service Provider of the Impact Assessment, if the Customer reasonably considers that it requires further information so that it may properly evaluate the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Service Provider of this fact and detail the further information that it requires. The Service Provider shall then re-issue the relevant Impact Assessment to the Customer within ten (10) Working Days of receiving such notification. At the Customer's discretion, the parties may repeat the process described in this paragraph 3.3 until the Customer is satisfied that it has sufficient information to properly evaluate the Impact Assessment.
- 3.4. Within fifteen (15) Working Days of receiving the first Impact Assessment from the Service Provider if no further information is required, or within ten (10) Working Days of receiving all further information that it may request pursuant to paragraph 3.3, whichever is soon, the Customer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 3.4.1. approve the Change Request, in which case the parties shall follow the procedure set out in paragraph 3.5;
 - 3.4.2. in its absolute discretion reject the Change Request, in which case it shall notify the Service Provider of the rejection. The Customer shall not reject any Change Request to the extent that the Change Request is necessary for the Service Provider or the Services to comply with any changes in Law. If the Customer does reject a Change Request, then it shall explain its reasons in writing to the Service Provider as soon as is reasonably practicable following such rejection; or
 - 3.4.3. in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Service Provider to modify the relevant document accordingly, in which event the Service Provider shall make such modifications within five (5) Working Days of such request. Subject to paragraph 3.3, on receiving the modified Change Request and/or Impact Assessment, the Customer shall approve or reject the Change Request within ten (10) Working Days.
- 3.5. If the Customer approves the proposed Change Request pursuant to paragraph 3.4 and it has not been rejected by the Service Provider pursuant to paragraph 3.6, then it shall inform the Service Provider that the Change Request is approved. Following such approval, the Service Provider shall sign a copy of the approved CCN and return it to the Customer. On counter-signature by the Customer, the CCN shall constitute a binding variation to this Contract.
- 3.6. Notwithstanding the foregoing, following (or at any time during) the preparation Impact Assessment in accordance paragraph 3.2, if the Service Provider reasonably believes that the Change Request which is requested by the Customer would:

- 3.6.1. materially and adversely affect the risks to the health and safety of any person; and/or
- 3.6.2. require the Services to be performed in a way that infringes any Law; and/or
- 3.6.3. the Service Provider demonstrates to the Customer's reasonable satisfaction that the Change Request is technically impossible to implement and neither the Service Provider Solution nor the Service Specification state that the Service Provider has the technical capacity and flexibility required to implement the Change Request,

then the Service Provider shall be entitled to reject the Change Request. If the Service Provider rejects the Change Request, it shall notify the Customer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 3.2.

Annex A

Contract Change Note for the Contract Change Procedure

Contract:

Effective Date:

Customer:

Service Provider:

Sequential Number: [to be allocated by the Customer]

Title:

Originator: for the [Customer/Service Provider]

Date change first proposed:

Number of pages attached:

WHEREAS the Service Provider and the Customer entered into a Contract for the provision of the Services dated [insert date] and now wish to amend that Contract as follows:

Reason for proposed change

[Party proposing change to complete as part of the Change Request]

Full details of proposed change

[Party proposing change to complete as part of the Change Request]

Target date for implementing proposed change

[Party proposing change to complete with the details of the accepted Impact Assessment]

Details of likely impact, if any, of proposed change on other aspects of the Contract

[Party proposing change to complete with the details of the accepted Impact Assessment]

IT IS AGREED as follows:

1. With effect from [date] the Contract shall be amended as set out below:

[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]
2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.
3. This CCN may be executed by exchange of signed counterparts as attachments to emails. Each counterpart that has been executed and delivered by a party shall constitute an original of this CCN, but all the counterparts shall together constitute the same CCN. If this CCN is

executed in counterparts, it shall not be effective unless and until each party has executed and delivered a counterpart to each of the other parties.

Signed for and on behalf of the Service Provider

By

Name

Title

Date

Signed for and on behalf of the Customer

By

Name

Title

Date

SCHEDULE 2-9

SUB-CONTRACTORS

1. INTRODUCTION

- 1.1. This Schedule contains:
 - 1.1.1. in paragraph 2, details of the Key Sub-Contractors to be engaged or employed by the Service Provider in the provision of the Services; and
 - 1.1.2. in paragraph 3, the procedure to select, appoint and manage Sub-Contractors.
- 1.2. Clause 32 of this Contract sets out the conditions and restrictions placed on amending or changing the Sub-Contractors.

2. KEY SUB-CONTRACTORS

Company Registration Number	Full legal name (and trading name where applicable) and registered address	Related Services	Role of Key Sub-Contractor	Sub contract price for Key Sub- Contractors expressed as a percentage of total projected Charges over the Term	

3. PROCEDURE TO SELECT, APPOINT AND MANAGE SUB-CONTRACTORS

The following procedure shall be followed by the Service Provider when selecting, appointing and managing Sub-Contractors under this Contract:

Appointment of Sub-Contractors

- 3.1. The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Service Provider is able to:
 - 3.1.1. manage any Sub-Contractors in accordance with Good Industry Practice; and
 - 3.1.2. comply with its obligations under this Contract in the delivery of the Services.
- 3.2. Prior to sub-contracting any of its obligations under this Contract, the Service Provider shall notify the Customer in writing of:
 - 3.2.1. the proposed Sub-Contractor's name, registered office and company registration number;
 - 3.2.2. the scope of the Services to be provided by the proposed Sub-Contractor; and
 - 3.2.3. where the proposed Sub-Contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contractor contract has been agreed on "arm's-length" terms.
- 3.3. In the event that the Service Provider, in accordance with the terms of this Contract, enters into a sub-contract in connection with this Contract, the Service Provider shall ensure that a term is included in the Sub-Contractor contract which requires the Service Provider to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contractor contract.
- 3.4. The Customer consents to the appointment of the Key Sub-Contractors as set out in Schedule 2-9 of this Contract at the date of this Contract.

SCHEDULE 2-10

DISPUTE RESOLUTION PROCEDURE

1. INTRODUCTION

- 1.1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.
- 1.2. In the event that a dispute cannot be resolved by the Customer and Service Provider representatives nominated under Clause 20.3 of this Contract within a maximum of twenty (20) Working Days (or such other period as agreed by the parties) after referral, the dispute shall be further referred to mediation in accordance with the provisions of Clause 20.4 of this Contract.
- 1.3. Subject always to the provisions of Clause 20 of this Contract, nothing in this dispute resolution procedure shall prevent the Customer or the Service Provider from seeking from any Court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.

2. MEDIATION

- 2.1. The procedure for mediation pursuant to Clause 20.5 of this Contract and consequential provisions relating to mediation shall be as follows:
 - 2.1.1. a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Customer and the Service Provider or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator; and
 - 2.1.2. the Customer and the Service Provider shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 2.2. Unless otherwise agreed by the Customer and the Service Provider, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3. In the event that the Customer and the Service Provider reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by Richard McLeod and John Bull.
- 2.4. Failing agreement, either the Customer or the Service Provider may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or otherwise without the prior written consent of both parties.
- 2.5. The Customer and the Service Provider shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
- 2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.

- 2.7. In the event that the Customer and the Service Provider fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of Clause 20.5 of this Contract.

3. ARBITRATION

- 3.1. In the event that a dispute between the Customer and the Service Provider, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph 2 of this Schedule, the parties may, in accordance with the provisions of Clause 20.5 of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.
- 3.2. The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:
- 3.2.1. that the dispute is referred to arbitration;
 - 3.2.2. the particulars of this Contract; and
 - 3.2.3. a brief summary of the subject of the dispute.
- 3.3. Unless otherwise agreed in writing by the Customer and the Service Provider, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.
- 3.4. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Schedule shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration (which are deemed to be incorporated into this Contract save that in the event of any conflict between those rules and this Contract, this Contract shall prevail).
- 3.5. It is agreed between the Customer and the Service Provider that for the purposes of the arbitration, the decision of the arbitrator shall be final and binding on the parties, except in the case of fraud, bias, manifest error, material breach of instructions on the part of the Arbitrator, or any material failure by the arbitrator to comply with the London Court of International Arbitration procedural rules, in which case a party will be permitted to apply to Court for an Order that:
- 3.5.1. the Arbitrator reconsider his decision (either all of it or part of it);
 - 3.5.2. the Arbitrator's decision be set aside (either all of it or part of it).
- 3.6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the Customer and the Service Provider, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.
- 3.7. The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the laws of England. The arbitration tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the Court.
- 3.8. The Customer and the Service Provider shall each bear their own costs in relation to any

reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.

- 3.9. In the event that the Customer and the Service Provider do not agree to refer the matter to arbitration, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of Clause 39 of this Contract.

4. MULTI-PARTY DISPUTES

- 4.1. All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 4 (the “**Multi-Party Dispute Resolution Procedure**”). If, at any time following the referral of a dispute to the dispute resolution procedure in accordance with Clause 20.5, but before such dispute has been referred to arbitration pursuant to paragraph 3, either:

4.1.1. the Customer reasonably considers that the matters giving rise to the dispute involve one or more Related Service Providers and/or Sub-Contractors, then the Customer shall be entitled to determine that the dispute is a Multi-Party Dispute; or

4.1.2. the Service Provider has reasonable grounds to believe that the matters giving rise to the dispute have been contributed to by one or more Related Service Providers and/or Sub-Contractors, the Service Provider may serve a Service Provider Request on the Customer.

- 4.2. If the Service Provider serves a Service Provider Request on the Customer, the Customer shall (acting reasonably) consider each Service Provider Request and shall determine within five (5) Working Days whether the dispute is:

4.2.1. a Multi-Party Dispute, in which case the dispute shall be resolved in accordance with paragraphs 4.4 to 4.7; or

4.2.2. not a Multi-Party Dispute, in which case the Customer shall notify the Service Provider of such determination and the dispute shall be resolved in accordance with paragraphs 1 to 3 above.

- 4.3. If the Customer has determined, following a Service Provider Request, that a dispute is not a Multi-Party Dispute, the Service Provider may not serve another Service Provider Request with reference to the same, or substantially the same, dispute.

- 4.4. If the Customer determines that the dispute is a Multi-Party Dispute pursuant to paragraph 4.2.1 or 4.2.1, it shall be dealt with by a board in relation to such Multi-Party Dispute (the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

4.4.1. the Customer;

4.4.2. the Service Provider;

4.4.3. each Related Service Provider and/or Sub-Contractor involved in the Multi-Party Dispute; and

4.4.4. any other representatives of any of the parties and/or any Related Service Provider and/or Sub-Contractor whom the Customer considers necessary,

(together “**Multi-Party Dispute Representatives**”).

- 4.5. The parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- 4.5.1. the parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Service Provider and/or Sub-Contractor attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 4.5.2. the Multi-Party Dispute Resolution Board shall meet within ten (10) Working Days of service of the Customer's determination in paragraph 4.2.1 or 4.2.1, at such time and place as the parties may agree or, if the parties do not reach agreement on the time and place within five (5) Working Days of such determination, at the time and place specified by the Customer, provided such place is at a neutral location within England and that the meeting is to take place on a Working Day; and
 - 4.5.3. in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the parties, the Related Service Provider and/or Sub-Contractor and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 4.6. If a Multi-Party Dispute is not resolved between the parties and all Related Service Providers and/or Sub-Contractors within twenty five (25) Working Days of the issue of the Customer's determination in paragraph 4.2.1, (or such longer period as the parties may agree in writing), then:
- 4.6.1. either party may refer the dispute to mediation in respect of the Multi-Party Dispute in which case paragraph 2 shall apply; and/or
 - 4.6.2. subject to paragraph 4.7, paragraph 3 shall apply to the Multi-Party Dispute,
- and in each case references to the "Service Provider" or the "parties" in such provisions shall include a reference to all Related Service Providers and/or Sub-Contractors.
- 4.7. If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 4.6.2 and either party is unable to compel a Related Service Provider and/or Sub-Contractor to submit to such arbitration proceedings, the Customer or the Service Provider may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the party which is in a direct contractual relationship with the Related Service Provider or, if a Sub-Contractor, by the Service Provider.

SCHEDULE 2-11

COMMERCIALLY SENSITIVE INFORMATION

1. INTRODUCTION

- 1.1. Without prejudice to the Customer's general obligation of confidentiality, the parties acknowledge that the Customer may have to disclose Information in or relating to this Contract following a Request for Information pursuant to Clause 18 of this Contract.
- 1.2. In this Schedule the parties have sought to identify the Service Provider's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4. Without prejudice to the Customer's obligation to disclose Information in accordance with FOIA, the Customer will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the following Information:

Item(s)		Duration of Confidentiality
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

SCHEDULE 2-12

EXIT AND SERVICE TRANSFER ARRANGEMENTS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Emergency Exit	means any termination of this Contract which is a: (a) termination of the whole or part of this Contract in accordance with Clause 10, except where the period of notice given under that Clause is greater than or equal to six (6) months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 10; or (c) wrongful termination or repudiation of this Contract by either party.
Ethical Wall Agreement	means an agreement between the parties in a form similar to the template ethical wall agreement set out at Annex 2.
Exit Information	has the meaning given in paragraph 3.1.
Exit Manager	means the person appointed by each party pursuant to paragraph 2.3 for managing the parties' respective obligations under this Schedule.
Net Book Value	means the net book value of the relevant asset(s) calculated in accordance with the depreciation policy of the Service Provider, such policy as set out in the form agreed by the parties in the letter from the Service Provider to the Customer of the same date as this Contract.
Non-Exclusive Assets	means those assets (if any) which are used by the Service Provider or a Sub-Contractor in connection with the Services but which are also used by the Service Provider or Sub-Contractor for other purposes of material value.
Ordinary Exit	means any termination of the whole or any part of this Contract which occurs: (a) pursuant to Clause 10 where the period of notice given by the party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or (b) as a result of the expiry of the Initial Term or any Extension Period.
Registers	means the registers referred to in paragraph 2.1(a) and 2.1(b).

Termination Fees	Assistance	has the meaning given to it in paragraph 9.1 of Schedule 2-12 (Exit and Service Transfer).
Termination Notice	Assistance	has the meaning given in paragraph 6.1.
Termination Period	Assistance	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Service Provider is required to provide the Termination Services as such period may be extended pursuant to paragraph 6.2.
Termination Services		means the services and activities to be performed by the Service Provider pursuant to the Exit Plan, including those activities listed in Annex 1, and any other services required pursuant to the Termination Assistance Notice.
Transferable Contracts		means the contracts with Sub-Contractors, licences for Service Provider's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Service Provider to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation.
Transferring Contracts		has the meaning given in paragraph 7.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Service Provider shall:

- (a) create and maintain a register of all:
 - (i) assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and
 - (ii) sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database register detailing the technical infrastructure and operating procedures through which the Service Provider provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Service Provider to understand how the Service Provider provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

- (c) agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that assets, sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Service Provider shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
- 2.3 Each party shall appoint a person for the purposes of managing the parties' respective obligations under this Schedule and provide written notification of such appointment to the other party within three (3) months of the Effective Date. The Service Provider's Exit Manager shall ensure that the Service Provider and its employees, agents and Sub-Contractors comply with this Schedule. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with the requirements set out in this Schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each party's compliance with it.
- 3 **OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**
 - 3.1 On reasonable notice at any point during the Term, the Service Provider shall provide to the Customer and/or its potential Replacement Service Providers (subject to the potential Replacement Service Providers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Service Providers undertaking due diligence:
 - (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers;
 - (c) an inventory of Customer Data in the Service Provider's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly with regards to Charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (f) to the extent permitted by applicable Law, all information relating to Transferring Service Provider Employees required to be provided by the Service Provider under this Contract; and
 - (g) such other material and information as the Customer shall reasonably require,

(together, the **"Exit Information"**).
 - 3.2 The Service Provider acknowledges that the Customer may disclose the Service Provider's Confidential Information to an actual or prospective Replacement Service Provider or any third party that the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph

3.2 disclose any Service Provider's Confidential Information which is information relating to the Service Provider's or its Sub-Contractors' prices or costs).

3.3 The Service Provider shall:

- (a) notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Customer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

3.4 The Service Provider may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail provided by the Service Provider shall be such as would be reasonably necessary to enable a third party (including a Replacement Service Provider) to:

- (a) prepare an informed offer for the provision of those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Service Provider (if the Service Provider is invited to participate).

3.6 Subject to Clause 14.1, the Service Provider shall indemnify and keep the Customer and any Replacement Service Provider fully indemnified in respect of any claims, costs (including reasonable legal costs), demands and liabilities arising from the provision of incorrect information provided to the Customer and/or the Replacement Service Provider by the Service Provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

3.7 The parties agree that the Contracts (Rights of Third Parties) Act 1999 (**CRTPA**) shall apply to paragraph 3.6 of this Schedule to the extent necessary that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider under that paragraph 3.6 in its own right.

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

4.1 The Customer may require the Service Provider to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Agreement, the Service Provider will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Service Provider's costs of entering into the Ethical Wall Agreement will be borne solely by the Service Provider.

5 EXIT PLAN

5.1 The Service Provider shall, within three (3) months after the Effective Date, deliver to the Customer an Exit Plan which:

- (a) sets out the Service Provider's proposed methodology for achieving an orderly transition of the relevant Services from the Service Provider to the Customer and/or its Replacement Service Provider on the partial termination, expiry or termination of this Contract;
 - (b) complies with the requirements set out in paragraph 5.3; and
 - (c) is otherwise reasonably satisfactory to the Customer.
- 5.2 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 its submission, then such dispute shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure).
- 5.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Service Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Service Provider of all such reasonable assistance as the Customer shall require to enable the Customer or its sub-contractors to provide the Services;
 - (c) a mechanism for dealing with partial termination on the assumption that the Service Provider will continue to provide the remaining Services under this Contract;
 - (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - (e) the management structure to be employed during the Termination Assistance Period;
 - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (g) how the Services will transfer to the Replacement Service Provider and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Service Provider or its Sub-Contractors (where applicable);
 - (h) the scope of the Termination Services that may be required for the benefit of the Customer (including such of the services set out in Annex 1 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any Termination Assistance Fees that would be payable for the provision of the Termination Services (calculated in accordance with the Contract Change Procedure methodology), together with a capped estimate of such Termination Assistance Fees;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;

- (l) procedures to deal with requests made by the Customer and/or a Replacement Service Provider for Staffing Information pursuant to Schedule 2-21 (Employment and TUPE); and
 - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The parties acknowledge that the migration of the Services from the Service Provider to the Customer and/or its Replacement Service Provider may be phased, such that certain of the Services are handed over before others.
- 5.5 The Service Provider shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Customer following the occurrence of a Financial Distress Event, within fourteen (14) Days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Service Provider shall submit the revised Exit Plan to the Customer for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure).

Finalisation of the Exit Plan

- 5.6 Within twenty (20) Working Days after service of a Termination Notice by either party or six (6) months prior to the expiry of this Contract, the Service Provider shall submit for the Customer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The parties will meet and use their reasonable endeavours to agree the contents of the final form of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Customer then such dispute shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure). Until the parties agree the final form of the Exit Plan, the Service Provider shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as it is relevant).

6 TERMINATION SERVICES

Notification of requirements for Termination Services

- 6.1 During the Initial Term (or the Extension Period), the Customer shall be entitled to require the provision of Termination Services by giving written notice to the Service Provider (a **"Termination Assistance Notice"**) at least four (4) months prior to the date of termination or expiry of this Contract 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:
 - (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and

- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty four (24) months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract;

6.2 The Customer shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance period beyond the date which is thirty (30) months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract, and provided that it shall notify the Service Provider to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to cancel its requirement for or terminate the provision of the Termination Services by giving not less than twenty (20) Working Days' written notice to the Service Provider to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Service Provider shall:

- (a) continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services (as applicable), provide the Customer with any reasonable assistance requested by the Customer to allow the Services to continue without interruption following a partial termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the applicable Services to the Customer and/or its Replacement Service Provider;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 6.3(b) without additional costs to the Customer;
- (d) provide the Services and the Termination Services (as applicable) at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with paragraph 6.5; and
- (e) at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

6.4 Without prejudice to the Service Provider's obligations under paragraph 6.3(c), if it is not possible for the Service Provider to reallocate resources to provide such assistance as is referred to in paragraph 6.3(b) without additional costs to the Customer, any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Contract Change Procedure.

6.5 If the Service Provider demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet the Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Service Provider shall comply with all of its obligations contained in the Exit Plan in respect of any termination (or partial termination).
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Service Provider shall:
- (a) cease to use the Customer Data (except as otherwise permitted by the terms of this Contract);
 - (b) provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
 - (d) return to the Customer the following materials as are in the Service Provider's possession or control:
 - (i) all copies of the Customer Software and any other software licensed by the Customer to the Service Provider under this Contract;
 - (ii) all materials created by the Service Provider under this Contract in which the Intellectual Property Rights are owned by the Customer;
 - (iii) any parts of the ICT Environment and any other equipment which belongs to the Customer; and
 - (iv) any items that have been charged to the Customer, including Consumables;
 - (e) vacate any Customer Premises (unless access is required to continue to deliver the Services);
 - (f) provide access during Working Hours to the Customer and/or the Replacement Service Provider for up to twelve (12) months after the partial termination, expiry or termination of this Contract to:
 - (i) such information relating to the Services as remains in the possession or control of the Service Provider; and
 - (ii) such members of the Service Provider Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Service Provider, provided that the Customer and/or the Replacement Service Provider shall pay the reasonable costs of the Service Provider actually incurred in responding to requests for access under this paragraph 6.7(f)(ii).
- 6.8 Upon partial termination, termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the

Services and the Termination Services and its compliance with the other provisions of this Schedule), each party shall return to the other party (or if requested, destroy or delete) all Confidential Information of the other party in respect of the terminated Services and shall certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

- 6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Service Provider in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or partial termination of this Contract and during the Termination Assistance Period, the Service Provider shall not, in respect of the terminated Services, without the Customer's prior written consent:

- (a) terminate, enter into or vary any sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges (or any Termination Assistance Fees);
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing assets or acquire any new assets; or
- (c) terminate, enter into or vary any licence for Software in connection with the Services.

- 7.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 6.3(e), the Customer shall provide written notice to the Service Provider setting out:

- (a) which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Service Provider in respect of the terminated Services ("**Transferring Assets**");
- (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (ii) the Non-Exclusive Assets,the Customer and/or the Replacement Service Provider requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Service Provider (the "**Transferring Contracts**"),

in order for the Customer and/or its Replacement Service Provider to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Service Provider, the Service Provider shall provide all reasonable assistance to the Customer and/or its Replacement Service Provider to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Service Provider requires to provide the Services or Replacement Services. Where requested by the Service Provider, the Customer and/or its Replacement Service Provider shall discuss in good

faith with the Service Provider which Transferable Contracts are used by the Service Provider in matters unconnected to the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Service Provider shall sell the Transferring Assets to the Customer and/or its nominated Replacement Service Provider for a consideration equal to their Net Book Value, except where:
- (a) a Termination Payment is payable by the Customer to the Service Provider, in which case, payment for such assets shall be included within the Termination Payment; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges (or the Termination Assistance Fees) at the time of expiry or termination of this Contract, in which case the Customer shall pay the Service Provider the Net Book Value of the Transferring Asset less the amount already paid through the Charges (or the Termination Assistance Fees).
- 7.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Service Provider (as appropriate) on payment for the same.
- 7.5 Where the Service Provider is notified in accordance with paragraph 7.2(b) that the Customer and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Service Provider shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Service Provider to use such assets (with a right of sub-licence or assignment on the same terms); or, failing which
 - (b) procure a suitable alternative to such assets and the Customer or the Replacement Service Provider shall bear the reasonable proven costs of procuring the same.
- 7.6 The Service Provider shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Service Provider of the Transferring Contracts. The Service Provider shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 7.7 The Customer (and/or the Customer shall procure that the Replacement Service Provider) shall:
- (a) accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract.
- 7.8 The Service Provider shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Service Provider has been effected.

- 7.9 Subject to Clause 14.1, the Service Provider shall indemnify the Customer (and/or the Replacement Service Provider, 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 Customer (and/or Replacement Service Provider) pursuant to paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such sub-contract where the loss, liability or cost arises as a result of the Service Provider's failure to comply with Clause 56.

8 SERVICE PROVIDER PERSONNEL

- 8.1 The Customer and Service Provider agree and acknowledge that in the event of the Service Provider ceasing to provide the Services or part of them for any reason, Part E of Schedule 2-21 (Employment and TUPE) shall apply in relation to any potential transfer of the Service Provider Personnel.
- 8.2 The Service Provider shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Service Provider.
- 8.3 During the Termination Assistance Period, the Service Provider shall give the Customer and/or the Replacement Service Provider reasonable access to the Service Provider Personnel to present the case for transferring their employment to the Customer and/or the Replacement Service Provider.
- 8.4 The Service Provider shall immediately notify the Customer or, at the direction of the Customer, the Replacement Service Provider, of any termination of employment notice given by the Service Provider or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Service Provider shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice away any employees, suppliers or Key Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Service Provider, except that this paragraph shall not apply where the employee, supplier or Key Sub-Contractor applies in response to a public advertisement open to all-comers of a job vacancy.

9 TERMINATION ASSISTANCE FEES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Customer may require the Service Provider to provide the Termination Services), the Customer shall pay the fees to the Service Provider in respect of the Termination Services in accordance with the rates set out in the Exit Plan (the "**Termination Assistance Fees**") (but shall not be required to pay any amount in excess of the Termination Assistance Fees). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Contract Change Procedure.
- 9.2 Where the Customer requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with paragraph 6.2:
- (a) where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Operational Charges when not stated in the Exit Plan) shall be payable; and

- (b) where less than six (6) months' notice is provided, no more than 1.2 times either the rate as set out in the Exit Plan (or the Operational Charges when not stated in the Exit Plan) shall be payable.

9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Contract Change Procedure.

9.4 Except as otherwise expressly specified in this Contract, the Service Provider shall not charge for the services provided by the Service Provider pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Service Provider in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Service Provider and/or the Replacement Service Provider and the Service Provider (as applicable) as follows:

- (a) the amount of an invoice shall be annualised and divided by 365 to reach a daily rate;
- (b) the Customer shall be responsible for (or shall procure that the Replacement Service Provider shall be responsible for) or entitled to (as the case may be) that part of the value of the applicable invoice for the number of complete Days following the transfer, multiplied by the daily rate; and
- (c) the Service Provider shall be responsible for or entitled to (as the case may be) the balance of the invoice.

10.2 Each party shall pay (and/or the Customer shall procure that the Replacement Service Provider shall pay) any monies due under paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

1

1.1 The Termination Services to be provided by the Service Provider shall include such of the following services as the Customer may specify:

- (a) ceasing all non-critical Software changes (except where agreed in writing with the Customer);
- (b) notifying the Sub-Contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting Documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Customer and/or the Replacement Service Provider after the end of the Termination Assistance Period;
- (d) delivering to the Customer the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
- (e) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Customer with any problem logs which have not previously been provided to the Customer;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) agreeing with the Customer an effective communication strategy and joint communications plan which sets out the implications for Service Provider Personnel, Customer staff, customers and key stakeholders;
- (k) reviewing all Software libraries used in connection with the Services and providing details of these to the Customer and/or the Replacement Service Provider;
- (l) providing assistance and expertise as necessary to support the Customer and/or the Replacement Service Provider in developing the migration plan for business operations and Customer Data to the Replacement Service Provider, which may include assistance and expertise relating to migration approach, testing of plans, contingency options and handling of historic or archived Customer Data;

- (m) provide all necessary support, equipment, tools, and Software, such as data migration services and/or APIs, in order to enable and support the execution of the migration plan by the Customer and/or Replacement Service Provider;
- (n) making available to the Customer and/or the Replacement Service Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Customer (acting reasonably) at the time of termination or expiry;
- (o) assisting in establishing naming conventions for any new production site;
- (p) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (q) generating a computer listing of the Source Code of the Data Quality Metrics in a form and on media reasonably requested by the Customer;
- (r) agreeing with the Customer a handover plan for all of the Service Provider's responsibilities as set out in the Security Management Plan;
- (s) delivering copies of the production databases (with content listings) to the Customer's and/or the Replacement Service Provider's operations staff (on appropriate media) as reasonably requested by the Customer;
- (t) assisting with the loading, testing and implementation of the production databases;
- (u) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (v) in respect of the maintenance and support of the Service Provider System, providing historical performance data for the previous six (6) months;
- (w) assisting in the execution of a parallel operation of the maintenance and support of the Service Provider System until the end of the Termination Assistance Period or as otherwise specified by the Customer (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (x) providing an information pack listing and describing the Services for use by the Customer in the procurement of the Replacement Services;
- (y) answering all reasonable questions from the Customer and/or the Replacement Service Provider regarding the Services;
- (z) agreeing with the Customer and/or the Replacement Service Provider a plan for the migration of the Customer Data to the Customer and/or the Replacement Service Provider;
- (aa) providing access to the Customer and/or the Replacement Service Provider during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Customer and/or the Replacement Service Provider:
 - (i) to information and documentation relating to the transferring Services that is in the possession or control of the Service Provider or its Sub-Contractors (and the Service Provider agrees and shall procure that its Sub-Contractors

do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- (ii) following reasonable notice and during the Service Provider's normal business hours, to members of the Service Provider Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-Contractors; and

(bb) knowledge transfer services, including:

- (i) transferring all training material and providing appropriate training to those Customer and/or Replacement Service Provider staff responsible for internal training in connection with the provision of the Services;
- (ii) providing for transfer to the Customer and/or the Replacement Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
- (iii) providing the Service Provider and/or the Replacement Service Provider with access to such members of the Service Provider's or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-Contractors; and
- (iv) allowing the Customer and/or the Replacement Service Provider to work alongside and observe the performance of the Services by the Service Provider at its Sites used to fulfil the Services (subject to compliance by the Customer and the Replacement Service Provider with any applicable security and/or health and safety restrictions),

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

1.2 The Service Provider shall:

- (a) provide a documented plan relating to the training matters referred to in paragraph 1.1(n) for agreement by the Customer at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1(r), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Customer Data migration plan agreed pursuant to paragraph 1.1(z), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Service Provider to the Customer and/or its Replacement Service Provider, the Service Provider shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Customer and/or the Replacement Service Provider.

1.4 The information which the Service Provider shall provide to the Customer and/or the Replacement Service Provider pursuant to paragraph 1.1(aa) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Customer and/or the Replacement Service Provider;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Customer pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Customer; and
- (g) any relevant interface information,

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

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

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Service Provider (in such form as the Service Provider shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Service Provider relevant to such Site and that the Customer deems reasonable; and
 - (iii) the Customer and/or the Replacement Service Provider shall pay the reasonable, proven and proper costs of the Service Provider incurred in facilitating such access.

ANNEX 2: TEMPLATE ETHICAL WALL AGREEMENT

[CUSTOMER]

and

[COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[] (the "Effective Date").

Between:

- (1) [INSERT NAME OF CUSTOMER] (the "Customer") [acting on behalf of the Crown] of [insert Customer's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "Counterparty"),

together the "Parties" and each a "Party".

BACKGROUND

- A. The Customer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document ("Agreement") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. The Customer is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the "Purpose").
- C. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

"**Affiliate**" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"**Agreement**" means this ethical walls agreement duly executed by the Parties;

"**Bid Team**" means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

"**Central Government Body**" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics, including:

- a) Government Departments;
- b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- c) Non-Ministerial Departments; or
- d) Executive Agencies;

"**Conflicted Personnel**" means any Representatives of:

- a) the Counterparty;
- b) any of the Counterparty's Affiliates; and/or

c) any Subcontractors,

who, because of the Counterparty's, any of its Affiliates' and/or any Subcontractors' relationship with the Customer under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

"Contract" means any pre-existing or previous contract between the Customer and:

- (a) the Counterparty;
- (b) any of the Counterparty's Affiliates;
- (c) any Subcontractor; and
- (d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Customer as part of an ITT Process (and shall include an Invitation to Negotiate);

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Customer has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Customer as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

"ITT Response" means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

"Procurement Process" means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Customer of all contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Customer;

"Procurement Regulations" means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

"Professional Advisor" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

"Purpose" has the meaning given to it in recital B to this Agreement;

"Representative" refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and,

where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

"Subcontractor" means an existing or proposed subcontractor of:

- a) the Counterparty; and/or
- b) any of the Counterparty's Affiliates,

who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

"Third Party" means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

"Working Day" means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Customer, the Counterparty, any of the Counterparty's Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Customer, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms **"associate"**, **"holding company"**, **"subsidiary"**, **"subsidiary undertaking"** and **"wholly owned subsidiary"** have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words **"include"** and **"including"** are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Customer to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

Conflicts of Interest

- 2.2 The Counterparty:
 - 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its

Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Customer under any Contract or pursuant to an open and transparent ITT Process; and

- 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Customer under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.
- 2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Customer's satisfaction, including one or more of the following:
- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
- 2.3.2 providing to the Customer promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Customer promptly upon any change to it;
- 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
- (i) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
 - (ii) which would or could in the opinion of the Customer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,
- becoming available to the Bid Team where the Customer has not made generally available that information to Other Bidders;
- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors in a form to be approved by the Customer;
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;

- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Customer, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

2.4 The Counterparty shall:

- 2.4.1 notify the Customer immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Customer full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
- 2.4.3 seek the Customer's approval to the Proposed Avoidance Measures which the Customer shall have the right to grant, grant conditionally or deny (if the Customer rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Customer grants approval or the Counterparty withdraws from the ITT Process).

- 2.5 The Counterparty will provide to the Customer, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Customer.
- 2.6 The Customer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Customer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

Exclusion from the ITT Process

- 2.8 Where, in the reasonable opinion of the Customer, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Customer's approval of the Proposed Avoidance Measures the Customer shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Customer may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Customer pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Customer.

Bid Costs

- 2.10 In no event shall the Customer be liable for any bid costs incurred by:
 - 2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
 - 2.10.2 any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

Specific Remedies

2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Customer shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

3 SOLE RESPONSIBILITY

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Customer of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Customer shall discharge the Counterparty's obligations.

4 WAIVER AND INVALIDITY

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

5.1 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer.

5.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

5.2.1 any Central Government Body; or

5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer; and

5.2.3 the Counterparty shall, at the Customer's request, enter into a novation agreement in such form as the Customer may reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Customer such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

- 7.1 The Parties acknowledge and agree that the Customer is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Customer may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8 NOTICES

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

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Counterparty	Customer
Contact	[REDACTED]	[REDACTED]
Address	30 Stamford Street, London, SE1 9LQ	NECS, John Snow House, Durham, DH1 3YG
Email	[REDACTED]	[REDACTED]

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 WAIVER AND CUMULATIVE REMEDIES

9.1 The rights and remedies under this Agreement may be waived only by notice, and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

10 TERM

10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of **1 year** from the Effective Date.

11 GOVERNING LAW AND JURISDICTION

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Customer

Name:

Signature:

Position in Customer:

Signed by the Counterparty

Name: [REDACTED]

Signature: [REDACTED]

Position in Counterparty: Partner

SCHEDULE 2-13

STANDARDS AND REGULATIONS

1. INTRODUCTION

- 1.1 This Schedule 2-13 sets out the Standards and Regulations with which the Service Provider shall comply in its provision of the Services.

2. GENERAL STANDARDS

- 2.1 The Service Provider shall ensure that all the Service Provider Personnel and Sub-Contractors used to provide the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

3. CURRENT STANDARDS

- 3.1 The Service Provider shall at all times provide the Services in compliance with the Standards and Regulations that are applicable to the Services and that the Customer has otherwise notified the Service Provider of at the Effective Date of this Contract (the “**Standards and Regulations**”), including:

3.1.1 the information governance core compliance requirements as set out in Annex A to this Schedule 2-13;

3.1.2 all other applicable quality and technical standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) and any other applicable quality Standards and Regulations and Government codes of practice that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with.

- 3.2 The Service Provider acknowledges that the definitive source for NHS and social care standards and amendments to them is the Information Standards Board for Health and Social Care (www.isb.nhs.uk). The definitive source for British (BS), European (CEN) or International (ISO) standards and amendments to them is the British Standards Institution (www.bsigroup.co.uk).

- 3.3 The Service Provider shall monitor NHS and industry standards as such standards are developed or updated. If the Standards and Regulations are developed or updated during the Term, the Service Provider shall promptly notify the Customer and the parties shall agree any change to the Contract in accordance with the Contract Change Procedure. If the Customer requires the Service Provider to implement or comply with additional standards, then this shall be agreed using the Contract Change Procedure.

Release Management

- 3.4 The Service Provider shall assess new and amended Standards and Regulations as part of the requirements definition for a new release and ensure that the new release complies with the Standards and Regulations that apply to the Contract.

- 3.5 The Service Provider shall warrant the compliance of the new release with the core compliance requirements set out in Annex A.

- 3.6 Any other variation from the Standards and Regulations must be agreed by the Customer as part of the design and development of an update to the Services. The variation must be explicitly stated and agreed by the Customer via the Contract Change Procedure.

Audit

- 3.7 The Service Provider shall on reasonable request provide the Customer with documents showing how the Standards and Regulations have been implemented in the provision of Services.
- 3.8 If the Customer finds that the Services do not comply with any Standards and Regulations where compliance has been agreed as part of the release then this will be a Default and the Service Provider shall resolve the Default in accordance with the terms of this Contract.

Annex A

Information Governance Core Compliance Requirements

1. Quality Management System

- 1.1 The Service Provider shall undertake its obligations arising hereunder and in all contracts in accordance with the ISO 9001:2015 Quality Management System standard or equivalent.
- 1.2 The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under all contracts in accordance with the ISO 9001:2015 Quality Management System standard or equivalent.

2. Environmental Management System

- 2.1 The Service Provider shall undertake its obligations arising hereunder and in all contracts in accordance with the ISO 14001:2015 Environmental Management System standard or equivalent.
- 2.2 The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under all contracts in accordance with the ISO 14001:2015 Environmental Management System standard or equivalent.

3. Project management

- 3.1 For project management responsibilities, the Service Provider shall ensure that PRINCE or an equivalent methodology is used.

4. Information Security

- 4.1 The Service Provider shall undertake its obligations arising hereunder and in all contracts in accordance with the Cyber Essentials Plus Information Security Management standard or equivalent.
- 4.2 The Service Provider shall ensure that all Goods and the Services intended for the transmission of protectively marked material or for the protection of systems accredited to store or process protectively marked material shall be protected and delivered to the standards set out in the Manual of Protective Security (**MPS**) or equivalent.
- 4.3 The Services shall comply with the Information Age Government Security Framework or equivalent.
- 4.4 The Service Provider shall prepare a Risk Management Accreditation Document Set (**RMADS**) (as defined in HMG Infosec Standard 2) covering the scope of the Services and shall maintain said RMADS throughout the term of this Contract. The RMADS shall be subject to the approval of the pan-Government Accreditor.

5. Health and Safety at Work

- 5.1 The Service Provider shall undertake its obligations arising hereunder and in all contracts in accordance with the OHSAS 18001 Occupational Health and Safety Management System or equivalent.
- 5.2 Both parties shall take all necessary measures to ensure the health and safety of the other party's employees and agents visiting their premises.
- 5.3 The Service Provider shall notify the Customer of any use of substances listed under COSHH regulations or the Montreal Protocol in the provision of the Goods and the Services.

6. Environmental Standards

- 6.1 The Service Provider shall undertake its obligations in accordance with Directive 2002/96/EC on Waste Electrical and Electronic Equipment and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment.

7. Sustainability

- 7.1 The Service Provider undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services (including the Services) are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.
- 7.2 The Service Provider shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.

SCHEDULE 2-14

TITLE AND RISK

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule 2-14 specifies the ownership and passing of title and risk from one party to another under certain circumstances during and following the Term of this Contract.

2. CONTRACT COMMENCEMENT

- 2.1. The Goods and the Customer Furnished Items to be used in the provision of the Services may (as applicable) be provided by the Service Provider, the Customer, a third party (e.g., lessor) or a previous service provider of the Customer. Subject always to the provisions of paragraph 3 of this Schedule, title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 2 of this Schedule.
- 2.2. Where any Goods are provided by the Service Provider (other than Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.4 of this Schedule):
- 2.2.1. title and risk remains with the Service Provider and such Goods (if required) shall be licensed to the Customer or its authorised agents; and
- 2.2.2. if the Goods are licensed in accordance with paragraph 2.2.1 of this Schedule and are in the Customer's sole possession and control, the Customer:
- 2.2.2.1. undertakes the safe custody, and the due return in accordance with the Exit Plan, of those Goods; and
- 2.2.2.2. shall be responsible for any deterioration in those Goods, fair wear and tear excepted.
- 2.3. Where any Customer Furnished Items are provided by the Customer (other than Customer Furnished Items which are provided by a previous service provider in accordance with paragraph 2.5 of this Schedule):
- 2.3.1. title remains with the Customer and such Customer Furnished Items (if required) shall be licensed to the Service Provider or its Sub-Contractors for use only for the purposes of this Contract;
- 2.3.2. the Service Provider undertakes the safe custody, and the due return in accordance with the Exit Plan, of those Customer Furnished Items;
- 2.3.3. the Service Provider shall be responsible for any deterioration in such Customer Furnished Items, fair wear and tear excepted; and
- 2.3.4. neither the Service Provider, nor any Sub-Contractor, nor any other person shall have a lien on such Customer Furnished Items for any sum due to the Service Provider, any Sub-Contractor or any other person and the Service Provider shall take all reasonable steps to ensure that the title of the Customer and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other people dealing with such Customer Furnished Items.
- 2.4. Where any Goods are leased, loaned or hired from a third party either directly to the Customer or via the Service Provider (in which case the identity of the third party shall be disclosed to the Customer), title to those Goods shall remain with the lessor and risk shall be determined in accordance with the relevant third party terms and conditions.

- 2.5. Where any Customer Furnished Items are provided by a previous service provider to the Customer, title shall remain with the previous service provider (or the third party leasing, loaning or hiring such Customer Furnished Items) and shall be licensed to the Customer, its authorised agents or the Service Provider, as agreed between the parties concerned.

3. DURING THE TERM

- 3.1. Where ownership of any Goods and/or Customer Furnished Items to be used in the provision of the Services changes during the Term, the passing of title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 3 of this Schedule.
- 3.2. Title in all Goods provided by the Service Provider shall pass to the Customer on the earlier of:
- 3.2.1. payment for such Goods; or
- 3.2.2. such Goods successfully passing the Acceptance Tests.
- 3.3. Notwithstanding paragraph 3.2.1 of this Schedule, risk in Goods provided by the Service Provider shall pass to the Customer when such Goods successfully pass the Acceptance Tests. If the Customer has paid for the Goods prior to conclusion of the Acceptance Tests, the Service Provider shall promptly repay the amounts paid by the Customer if the Goods (or any part thereof) do not successfully pass the Acceptance Tests.
- 3.4. Notwithstanding paragraph 3.2 of this Schedule, at anytime prior to the transfer of such Goods to the Customer in accordance with paragraph 3.2 of this Schedule, the Customer may request that the Service Provider transfer to a lessor nominated by the Customer certain Goods specified in the Customer's request. The title and risk in such Goods during the Term shall be determined in accordance with the relevant lease agreement. Where any terms in the lease agreement conflict or are inconsistent with any terms contained in this Contract, the Service Provider agrees not to enforce such conflicting or inconsistent terms against the Customer.
- 3.5. Where title and risk in any Customer Furnished Items is to transfer to the Service Provider, the Customer and the Service Provider shall agree the terms of such transfer in accordance with the Contract Change Procedures.

4. SERVICE TRANSFER

- 4.1. Title and risk in the Goods after the Term to the extent that such Goods are Transferrable Assets shall be determined as specified in Schedule 2-12 (Exit and Service Transfer Arrangements).

SCHEDULE 2-15

LIQUIDATED DAMAGES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule sets out the circumstances under this Contract where the Customer has a right to claim Liquidated Damages rather than the other rights and remedies expressed in the Contract. The Schedule sets out the period of such Liquidated Damages and their amounts.

2. LIQUIDATED DAMAGES

- 2.1. Without prejudice to any other remedies available to the Customer, for each of the Delivery Milestones set out in the table in paragraph 2.2 below:
- 2.1.1. if Achievement of a Delivery Milestone is delayed as a result of a Default by the Service Provider, the Service Provider shall pay to the Customer as Liquidated Damages for each Day of delay the relevant sum specified in the table in paragraph 2.2 below up to the end of the relevant Liquidated Damages Period or the end of the Term, whichever is sooner; and
- 2.1.2. if a Delivery Milestone is not Achieved by the end of the Liquidated Damages Period, or the Customer is entitled to or does terminate the Contract, the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.
- 2.2. The following table sets out the Delivery Milestones for which, in the event of a delay to the agreed Milestone Date for the Achievement of a Delivery Milestone, the Customer shall be entitled to recover Liquidated Damages.

Delivery Milestone	Liquidated Damages Period	Liquidated Damages Daily Rate (£ / Day)
[M5 (Go-Live)]	[6 months]	[INSERT]
[Delivery of the Service Provider Roadmap Plan]	[INSERT]	[INSERT]
[Insert any other Delivery Milestones (including any Initial Roadmap Items)]	[INSERT]	[INSERT]

- 2.3. No payment or concession to the Service Provider by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Liquidated Damages pursuant to the provisions of paragraph 2.1 of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such Liquidated Damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Liquidated Damages.
- 2.4. At the Effective Date, the Service Provider and the Customer agree that the rate that Liquidated Damages shall accrue for each Day during the Liquidated Damages Period, as specified in paragraph 2.2 of this Schedule 2-15, represents a genuine pre-estimate of the Customer's loss, calculated in accordance with paragraph 3 of this Schedule.

3. CALCULATION OF LIQUIDATED DAMAGES

- 3.1. The parties agree that calculation for and the amount of the following pre-estimates of loss

resulting from a delay to the applicable Delivery Milestone (as set out in the table below) are reasonable and proportionate to protect the Customer's legitimate interest in receiving the Services in accordance with the agreed timetable and such amount reflects the loss the Customer would suffer resulting from a delay, which is not intended to be, nor shall it be deemed to be a penalty.

Delivery Milestone	Calculation of Pre-Estimated Loss	Pre-Estimated Amount of Loss
[M5 (Go-Live)]		
[Delivery of the Service Provider Roadmap Plan]		
[Insert any other Delivery Milestones (including any Initial Roadmap Items)]		

SCHEDULE 2-16
BCDR PLAN



SD021v09-09102023
-Infrastructure-as-a-

PART A: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Annual Revenue	means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Service Provider or, as appropriate, the Service Provider group in its most recent published accounts, subject to the following methodology: (a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a pro forma figure for a twelve (12) month period; and (b) where the Service Provider, the Service Provider group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date.
Associate	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles.
Business Services	Continuity has the meaning given in paragraph 4.2(b).
Critical Infrastructure	National CNI means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: (a) major detrimental impact on the availability, integrity or delivery of essential services, including those services whose integrity, if compromised, could result in significant loss of life or casualties, taking into account significant economic or social impacts; and/or

- (b) significant impact on the national security, national defence, or the functioning of the UK.

Department

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

- (a) Government Department; or
- (b) Non-Ministerial Department.

Parent Undertaking

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

Public Sector Dependent Supplier

means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business.

Relevant Authority

means the Customer and the Cabinet Office Markets and Suppliers Team or, where the Service Provider is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team.

UK Public Sector Business

means any goods, service or works provision to UK public sector bodies, including Central Government Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations.

2 SERVICE CONTINUITY PLAN

2.1 Within forty (40) Working Days from the Effective Date, the Service Provider shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Service Provider shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Service Provider, any Key Sub-Contractor and/or any Service Provider group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A, which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B, which shall relate to business continuity (the "**Business Continuity Plan**");

- (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
 - (iv) Part D which shall relate to an Insolvency Event of the Service Provider, any Key Sub-Contractors and/or any Service Provider Group member (the “**Insolvency Continuity Plan**”); and
 - (b) unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Service Provider, the Customer shall:
- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - (b) notify the Service Provider in writing that it approves or rejects the draft Service Continuity Plan no later than twenty (20) Working Days after the date on which the draft Service Continuity Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft Service Continuity Plan:
- (a) the Customer shall inform the Service Provider in writing of its reasons for its rejection; and
 - (b) the Service Provider shall then revise the draft Service Continuity Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Service Continuity Plan to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraph 2.3 and this paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either party may refer any disputed matters for resolution in accordance with Schedule 2-10 (Dispute Resolution Procedure) at any time.
- 3 **SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS**
- 3.1 Part A of the Service Continuity Plan shall:
- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
 - (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Customer by a Related Service Provider;
 - (c) contain an obligation upon the Service Provider to liaise with the Customer and (at the Customer's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
 - (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Customer and any of its other Related Service Providers in each case as notified to the Service Provider by the Customer from time to time;

- (e) 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 (including but without limitation a web-site (including FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Service Provider, any Key Sub-Contractors and/or Service Provider group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Service Provider (and any Key Sub-Contractors) and for the Customer;
- (i) identify the procedures for reverting to "normal service";
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster, Service Failure, an Insolvency Event of the Service Provider, any Key Sub-Contractor and/or any Service Provider group member, or disruption on the operations of the Customer, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of industry standards from time to time in force; and

- (d) there is a process for the management of Disaster Recovery testing detailed in the Service Continuity Plan.
- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, the business processes facilitated by the Services and the business operations supported by the Services, and/or changes to the Service Provider group structure.
- 3.4 The Service Provider shall not be entitled to any: i) relief from its obligations to meet the Service Levels; or ii) increase in the Charges (or the Termination Assistance Fees), to the extent that a Disaster occurs as a consequence of any act or omission of the Service Provider or its breach of this Contract.

4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported, and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:
 - (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in, or disruption to, the Services; and
 - (b) the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing or residual effects of the failure or disruption, including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - (a) address the various possible levels of failures of, or disruptions to, the Services;
 - (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of, and disruption to, the Services (such services and steps, the “**Business Continuity Services**”);
 - (c) specify any applicable service levels and performance indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed to ensure that upon the occurrence of a Disaster, the Service Provider shall ensure continuity of the business operations of the Customer 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 Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Service Provider in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Service Provider's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) recovery procedures for the Services; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing or residual effects of the failure or disruption of the Services;
- (c) any applicable service levels or performance indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any Disaster recovery sites used by the Service Provider in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Service Provider to permit continuity of the business operations of the Customer supported by the Services through continued provision of the Services following an Insolvency Event of the Service Provider, any Key Sub-Contractor and/or any Service Provider group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

- (a) Communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Service Provider Personnel, Key Sub-Contractor personnel and Service Provider group member personnel;
- (b) Identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Service Provider, Key Sub-Contractors and Service Provider group members where failure of those dependencies could reasonably have an adverse impact on the Services;
- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Service Provider, Key Sub-Contractors and/or Service Provider group members to minimise and mitigate the effects of an Insolvency Event on the Services;
- (e) details of the recovery team to be put in place by the Service Provider (which may include representatives of the Service Provider, Key Sub-Contractors and Service Provider group members); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the Insolvency Continuity Plan in the event of an Insolvency Event of the Service Provider, any Key Sub-Contractor and/or any Service Provider group member.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Service Provider shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six (6) months;
- (b) within three (3) calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 9;
- (c) within fourteen (14) Days of a Financial Distress Event;
- (d) within thirty (30) Days of either a change of control of the Service Provider or a member of the Service Provider's group or an Insolvency Event of a member of the Service Provider's group (together a "**Corporate Change Event**") (unless the Customer (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in paragraph 2.8(b)(i), in which case that Corporate Change Event Grace Period will apply); and
- (e) where the Customer requests any additional reviews (over and above those provided for in paragraphs 7.1(a) to 7.1(d)) by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Service Provider shall provide an accurate written estimate of the total costs payable by the Customer for such additional review for the Customer's approval. The costs of both parties of any such additional reviews shall be met by the Customer except that the Service Provider shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.

- 7.2 Each review of the Service Continuity Plan pursuant to paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity 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 Service Continuity Plan. A review shall be completed by the Service Provider within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Customer shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Customer a report (a "**Review Report**") setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Service Provider's proposals for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party (the "**Service Provider's Proposals**").
- 7.3 Following receipt of the Review Report and the Service Provider's Proposals, the Customer shall:
- (a) review and comment on the Review Report and the Service Provider's Proposals as soon as reasonably practicable; and
 - (b) notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 7.4 If the Customer rejects the Review Report and/or the Service Provider's Proposals:
- (a) the Customer shall inform the Service Provider in writing of its reasons for its rejection; and
 - (b) the Service Provider shall then revise the Review Report and/or the Service Provider's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Service Provider's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraph 7.3 and this paragraph 7.4 shall apply again to any resubmitted Review Report and Service Provider's Proposals, provided that either party may refer any disputed matters for resolution in accordance with Schedule 2-10 (Dispute Resolution Procedure) at any time.
- 7.5 The Service Provider shall as soon as is reasonably practicable after receiving the Customer's approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services beyond the Service Provider's reasonable control.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Service Provider shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year on a date to be agreed by the parties). Subject to paragraph 8.2, the Customer may require the Service Provider to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Customer requires an additional test of the Service Continuity Plan, it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the Service Continuity Plan. The Service Provider's costs of the additional test shall be borne by the Customer unless the Service Continuity Plan fails the additional test, in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 8.3 The Service Provider shall undertake and manage testing of the Service Continuity Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 8.4 The Service Provider shall ensure that any use by it or any Sub-Contractor of live data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 8.5 The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Service Provider's proposals for remedying any such failures.
- 8.6 Following each test, the Service Provider shall take all measures requested by the Customer, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Service Provider (at no additional cost to the Customer) by the date reasonably required by the Customer and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Contract.
- 8.8 The Service Provider shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services at no additional cost to the Customer.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Services or a Disaster, the Service Provider shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and

shall inform the Customer promptly of such invocation. In all other instances the Service Provider shall invoke the business continuity and disaster recovery elements only with the prior consent of the Customer.

- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Service Provider:
- (a) where an Insolvency Event of a Key Sub-Contractor and/or Service Provider Group member (other than the Service Provider) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Service Provider and the insolvency arrangements enable the Service Provider to invoke the plan.

PART B: CORPORATE RESOLUTION PLANNING

1 Service Status and Service Provider Status

- 1.1 This Contract is a “Gold” Critical Service Contract as defined by the Cabinet Office Contract Tiering Tool.
- 1.2 The Service Provider shall notify the Customer and the Cabinet Office Markets and Suppliers Team (resolution.planning@cabinetoffice.gov.uk) in writing within five (5) Working Days of the Effective Date and throughout the Term within one hundred and twenty (120) Days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

2 Provision of Corporate Resolution Planning Information (“CRP Information”)

- 2.1 Paragraphs 2 to 4 shall apply if this Contract has been specified as a Critical Service Contract under paragraph 1.1 or the Service Provider is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to paragraphs 2.6, 2.10 and 2.11:
- (a) where this Contract is a Critical Service Contract, the Service Provider shall provide the Relevant Authority or Relevant Authorities with CRP Information within sixty (60) Days of the Effective Date; and
 - (b) except where it has already been provided in accordance with paragraph 2.2(a), where the Service Provider is a Public Sector Dependent Supplier, it shall provide the applicable Relevant Authority with the CRP Information within sixty (60) Days of the date of the Relevant Authority’s request.
- 2.3 The Service Provider shall ensure that the CRP Information provided pursuant to paragraphs 2.2, 2.8 and 2.9:
- (a) is full, comprehensive, accurate and up to date;
 - (b) is split into three parts:
 - (i) Exposure Information (Contracts List);
 - (ii) Corporate Resolvability Assessment (Structural Review); and

(iii) Financial Information and Commentary,

and is structured and presented in accordance with the requirements and explanatory notes set out in the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Service Provider's circumstances);

- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;
- (d) provides a clear description and explanation of the Service Provider group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
- (e) complies with the requirements set out at Annex 1 (*Exposure Information (Contracts List)*), Annex 2 (*Corporate Resolvability Assessment (Structural Review)*) and Annex 3 (*Financial Information And Commentary*) respectively.

2.4 Following receipt by the Relevant Authority of the CRP Information pursuant to paragraphs 2.2, 2.8 and 2.9, the Customer shall procure that the applicable Relevant Authorities discuss in good faith the contents of the CRP Information with the Service Provider and by no later than sixty (60) Days after the date on which the CRP Information was delivered by the Service Provider, notify the Service Provider in writing that Relevant Authority either approves or rejects the CRP Information.

2.5 If the Relevant Authority rejects the CRP Information:

- (a) the Customer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Service Provider in writing of its reasons for its rejection; and
- (b) the Service Provider shall revise the CRP Information, taking reasonable account of the Relevant Authority's comments, and shall re-submit the CRP Information to the Relevant Authority for approval within thirty (30) Days of the date of the Relevant Authority's rejection. The provisions of paragraphs 2.3 to 2.5 shall apply again to any resubmitted CRP Information provided that either party may refer any disputed matters for resolution in accordance with Schedule 2-10 (Dispute Resolution Procedure) at any time.

2.6 Where the Service Provider or a member of the Service Provider group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and that CRP Information has been accepted in writing by that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team) (an "**Assurance**"), then provided that the Assurance remains Valid (as defined below) on the date by which the CRP Information would otherwise be required, the Service Provider shall not be required to provide the CRP Information under paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority on or before the date on which the CRP Information would otherwise have been required.

2.7 An Assurance shall be deemed Valid for the purposes of paragraph 2.6 if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed since it was issued

and no more than eighteen (18) months has elapsed since the Accounting Reference Date on which the CRP Information was based); and

- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.

2.8 If this Contract is a Critical Service Contract, the Service Provider shall provide an updated version of the CRP Information (or, in the case of paragraph 2.8(c), its initial CRP Information) to the Relevant Authority:

- (a) within fourteen (14) Days of the occurrence of a Financial Distress Event (along with any additional confidential information no longer exempted from disclosure under paragraph 2.11);
- (b) within thirty (30) Days of a Corporate Change Event unless:
 - (i) the Service Provider requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Service Provider to comply with this paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six (6) months after the Corporate Change Event. During a Corporate Change Event Grace Period the Service Provider shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Service Provider fails to comply with this paragraph; or
 - (ii) not required pursuant to paragraph 2.10;
- (c) within thirty (30) Days of the date that:
 - (i) the credit rating(s) of each of the Service Provider and its Parent Undertakings fail to meet any of the criteria specified in paragraph 2.10; or
 - (ii) none of the credit rating agencies specified at paragraph 2.10 hold a public credit rating for the Service Provider or any of its Parent Undertakings; and
- (d) in any event, within six (6) months after each Accounting Reference Date or within fifteen (15) months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of paragraphs 2.8(a) 2.8(b) or 2.8(c) since the most recent Accounting Reference Date (being no more than twelve (12) months previously) within the timescales that would ordinarily be required for the provision of that information under this paragraph 2.8(d); or
 - (ii) unless not required pursuant to paragraph 2.10.

2.9 Where the Service Provider is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in paragraphs 2.8(a) to (d), the Service Provider shall provide at the request of the Relevant Authority and within the applicable timescales for each event as set out in paragraph 2.8 (or such longer

timescales as may be notified to the Service Provider by the Customer), the CRP Information to the Relevant Authority.

- 2.10 Where the Service Provider or a Parent Undertaking of the Service Provider has a credit rating of either:

- (a) Aa3 or better from Moody's;
- (b) AA- or better from Standard and Poor's; or
- (c) AA- or better from Fitch;

the Service Provider will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs; or (ii) the Service Provider and its Parent Undertakings cease to fulfil the criteria set out in this paragraph 2.10, in which cases the Service Provider shall provide the updated version of the CRP Information in accordance with paragraph 2.8.

- 2.11 Subject to paragraph 4, where the Service Provider demonstrates to the reasonable satisfaction of the Relevant Authority that a particular item of CRP Information is highly confidential, the Service Provider may, having orally disclosed and discussed that information with the Relevant Authority, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Service Provider shall promptly provide the relevant information to the Relevant Authority to the extent required under paragraph 2.8.

3 Termination Rights

- 3.1 The Customer shall be entitled to terminate this Contract under Clause 10.2.1 if the Service Provider is required to provide CRP Information under paragraph 2 and either:

- (a) the Service Provider fails to provide the CRP Information within three (3) months of the Effective Date if this is a Critical Service Contract or otherwise within three (3) months of the Relevant Authority's request; or
- (b) the Service Provider fails to obtain an Assurance from the Relevant Authority within three (3) months of the date that it was first required to provide the CRP Information under this Contract.

4 Confidentiality and usage of CRP Information

- 4.1 The Customer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Service Provider and/or Service Provider group members involved in UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for End Users and protect CNI in such eventuality.
- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Service Provider's request, the Customer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality agreement with the Service Provider containing terms no less stringent than those placed on the Customer under paragraph 4.1 and Clause 17.
- 4.3 The Service Provider shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority pursuant to paragraph 2 subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.

- 4.4 Where the Service Provider is unable to procure consent pursuant to paragraph 4.3, the Service Provider shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds, including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality; and
 - (b) providing the information in a form that does not breach its obligations of confidentiality, including (where possible) by:
 - (i) summarising the information;
 - (ii) grouping the information;
 - (iii) anonymising the information; and
 - (iv) presenting the information in general terms.
- 4.5 The Service Provider shall provide the Relevant Authority with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Service Provider is legally permitted to do so.

ANNEX 1: EXPOSURE INFORMATION (CONTRACTS LIST)

- 1 The Service Provider shall:
 - 1.1 provide details of all agreements held by members of the Service Provider group where those agreements are for goods, services or works provision and:
 - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1(a) of this Annex 1 and where the member of the Service Provider group is acting as a sub-contractor under the agreement with the end recipient; or
 - (c) involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5 million per Contract Year and their related sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)

- 1 The Service Provider shall:
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Service Provider group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Service Provider or another member of the Service Provider group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Service Provider group; and
 - 1.3 provide full details of the importance of each member of the Service Provider group to the Service Provider group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY

- 1 The Service Provider shall:
 - 1.1 provide sufficient financial information for the Service Provider group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Service Provider group and the current performance of the Service Provider as a standalone entity; and
 - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
- 2 For the avoidance of doubt, the financial information to be provided pursuant to paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Service Provider to comply with its obligations under this Schedule 2-16. If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

SCHEDULE 2-17

SECURITY ACCREDITATION

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

Accreditation	means the assessment of the Core Information Management System in accordance with paragraph 6 by the Customer or an independent information risk manager/professional appointed by the Customer, which results in an Accreditation Decision.
Accreditation Decision	means the decision of the Customer, taken in accordance with the process set out in paragraph 6, to issue the Service Provider with a Residual Risk Statement or a Risk Management Rejection Notice in respect of the Core Information Management System.
Accreditation Plan	means the Service Provider's plan to attain a Residual Risk Statement from the Customer, which is prepared by the Service Provider and approved by the Customer in accordance with paragraph 6.
Anti-Malicious Software	means software that scans for and identifies possible malicious software in the ICT Environment.
Baseline Security Requirements	means the Customer's minimum requirements for security, the current copy of which is contained in Annex 1 (Baseline Security Requirements) of this Schedule 2-17, as updated from time to time by the Customer and notified to the Service Provider.
Breach of Security	means the occurrence of: (a) any unauthorised access to or use of the Services, the Customer Premises, the Sites, the Service Provider System, the Customer System and/or any information or data (including the Confidential Information and the Customer Data) used by the Customer, the Service Provider or any Sub-Contractor in connection with this Contract; (b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including copies of such information or data, used by the Customer, the Service Provider or any Sub-Contractor in connection with this Contract; and/or (c) any part of the Service Provider System ceasing to be compliant with the Certification Requirements,

in each case as more particularly set out in the security requirements in Schedule 2-2 (Service Specification), the Security Policy and the Baseline Security Requirements.

Certification Requirements	means the requirements set out in paragraphs 7.1 to 7.7, inclusive.
CHECK Service Provider	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by the paragraph 8.1.
CIMS Sub-Contractor	means a Sub-Contractor that provides or operates the whole, or a substantial part, of the Core Information Management System.
Commercial off the shelf Software or COTS Software	means the Service Provider COTS Software and the Third Party COTS Software, as set out in Schedule 2-18 (Software and Software Licence Terms).
Core Information Management System or CIMS	means those information assets, IT systems and/or Sites which will be used by the Service Provider and/or its Sub-Contractors to Process Customer Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources) which the Customer has determined in accordance with paragraph 4.2 shall be subject to Accreditation.
CREST Service Provider	means a company with a SOC (Security Operations Centre) Accreditation from CREST International.
Cyber Essentials	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme.
Cyber Essentials Plus	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme.
Cyber Essentials Scheme	means the Cyber Essentials scheme operated by the National Cyber Security Centre.
Higher Risk Sub-Contractor	means a Sub-Contractor that Processes Customer Data and: (a) where that data includes the Personal Data of 1000 or more individuals in aggregate during the period between the Operational Services Commencement Date and the date on which this Contract terminates; or (b) any part of that data includes any of the following: (i) financial information (including any tax and/or welfare information) relating to any person;

- (ii) any information relating to actual or alleged criminal offences (including criminal records);
- (iii) any information relating to children and/or vulnerable persons;
- (iv) any information relating to social care;
- (v) any information relating to a person's current or past employment; or
- (vi) Special Category Personal Data; or
- (c) the Customer in its discretion, designates a Sub-Contractor to be a higher risk Sub-Contractor in any procurement document related to this Contract; or
- (d) the Customer considers in its discretion, that any actual or potential Processing carried out by the Sub-Contractor is high risk].

Information Management System means the Core Information Management System and the Wider Information Management System.

IT Health Check has the meaning given paragraph 8.1(a).

Medium Risk Sub-Contractor means a Sub-Contractor that Processes Customer Data[, where that data:

- (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the Operational Services Commencement Date and the date on which this Contract terminates; and
- (b) does not include Special Category Personal Data;]

Process means any operation which is 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.

Required Register Changes means the register forming part of the Security Management Plan which records each of the changes that the Service Provider has agreed with the Customer shall be made to the Core Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in paragraph 6.14 together with the date

on which each such change shall be implemented and the date on which each such change was implemented.

Residual Risk Statement means a notice issued by the Customer which sets out the information risks associated with using the Core Information Management System and confirms that the Customer is satisfied that the identified risks have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Customer.

Risk Management Rejection Notice has the meaning given in paragraph 6.8(b).

Security Remediation Action Plan has the meaning given in paragraph 8.3(c)(i).

Security Test has the meaning given paragraph 8.1.

Service Provider COTS Software means Service Provider Software that:

(a) the Service Provider makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Service Provider save as to price; and

(b) has a Non-trivial Customer Base.

Special Category Personal Data means the categories of Personal Data set out in article 9(1) of the UK GDPR.

Statement of Information Risk Appetite has the meaning given in paragraph 5.1.

Sub-Contractor Security Requirements means those requirements set out in Annex 2.

Wider Information Management System means those information assets, IT systems and/or Sites which will be used by the Service Provider and/or its Sub-Contractors to Process Customer Data which have not been determined by the Customer to form part of the Core Information Management System, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources).

2 Introduction

2.1 This Schedule sets out:

(a) the arrangements the Service Provider must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Customer Data, the ICT Environment, the Services and the Information Management System;

- (b) the process which shall apply to the Accreditation of the Core Information Management System in paragraph 6;
- (c) the Certification Requirements applicable to the Wider Information Management System in paragraph 7;
- (d) the Security Tests which the Service Provider shall conduct during the Term in paragraph 8;
- (e) the Security Tests which the Customer may conduct during the Term in paragraph 8.6;
- (f) the requirements to patch vulnerabilities in the Core Information Management System in paragraph 9;
- (g) the obligations on the Service Provider to prevent the introduction of Malicious Software into the Information Management System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Information Management System in paragraph 10; and
- (h) each party's obligations in the event of an actual or attempted Breach of Security in paragraph 11.

3 **Principles of Security**

- 3.1 The Service Provider acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of the Customer Data and, consequently on the security of:
 - (a) the Sites;
 - (b) the ICT Environment;
 - (c) the Services; and
 - (d) the Core Information Management System.
- 3.2 Notwithstanding the involvement of the Customer in the Accreditation of the Core Information Management System, the Service Provider shall be and shall remain responsible for:
 - (a) the security, confidentiality, integrity and availability of the Customer Data whilst that Customer Data is under the control of the Service Provider or any of its Sub-Contractors; and
 - (b) the security of the Information Management System.
- 3.3 The Service Provider shall:
 - (a) comply with the Baseline Security Requirements; and
 - (b) ensure that each Sub-Contractor that Processes Customer Data complies with the Sub-Contractor Security Requirements.
- 3.4 The Service Management Board established under Schedule 2-27 (Governance) shall, in addition to its responsibilities set out in that Schedule, monitor and may also provide

recommendations to the Service Provider on the Accreditation of the Core Information Management System.

3.5 To facilitate the Service Provider's design, implementation, operation, management and continual improvement of the Security Management Plan and the security of the Services and Information Management System and otherwise:

- (a) the Service Provider shall provide access to the Service Provider Personnel responsible for information assurance; and
- (b) the Customer shall provide access to its personnel responsible for information assurance,

in each case at reasonable times on reasonable notice.

4 Information Management System

4.1 The Information Management System comprises the Core Information Management System and the Wider Information Management System.

4.2 The component parts of the Core Information Management System and its boundary with the Wider Information Management System are shown in the diagram in Annex 3 (Information Management System) of this Schedule 2-17.

4.3 Any proposed change to the component parts of the Core Information Management System or the boundary between the Core Information Management System and the Wider Information Management System shall be notified and processed in accordance with the Contract Change Procedure.

5 Statement of Information Risk Appetite and Baseline Security Requirements

5.1 The Service Provider acknowledges that the Customer has provided and the Service Provider has received a statement of information risk appetite for the Service Provider System and the Services (the "**Statement of Information Risk Appetite**").

5.2 The Customer's Baseline Security Requirements in respect of the Core Information Management System are set out in Annex 1 (Baseline Security Requirements) of this Schedule 2-17.

6 Accreditation of the Core Information Management System

6.1 The Core Information Management System shall be subject to Accreditation in accordance with this paragraph 6.

6.2 The Service Provider acknowledges that the purpose of Accreditation is to ensure that:

- (a) the Security Management Plan accurately represents the Core Information Management System;
- (b) the Accreditation Plan, if followed, provides the Customer with sufficient confidence that the Core Information Management System will meet the requirements of the Baseline Security Requirements and the Statement of Information Risk Appetite; and

- (c) the residual risks of the Core Information Management System are no greater than those provided for in the Statement of Risk Information Appetite and Baseline Security Requirements.
- 6.3 The Accreditation shall be performed by the Customer or by representatives appointed by the Customer.
- 6.4 In addition to any obligations imposed by Schedule 2-2 (Service Specification), Schedule 2-5 (Implementation and Delivery) and Schedule 2-6 (Acceptance Procedures), the Service Provider must ensure that its Detailed Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule 2-17, including any requirements imposed on Sub-Contractors by Annex 2 (Security Requirements for Sub-Contractors) from the Operational Services Commencement Date.
- 6.5 By the date specified in the Detailed Implementation Plan, the Service Provider shall prepare and submit to the Customer the risk management documentation for the Core Information Management System, which shall be subject to approval by the Customer in accordance with, this paragraph 6 (the "**Security Management Plan**").
- 6.6 The Security Management Plan shall be structured in accordance with the template as set out in Annex 4 of this Schedule 2-17 and include:
 - (a) the Accreditation Plan, which shall include:
 - (i) the dates on which each subsequent iteration of the Security Management Plan will be delivered to the Customer for review and staged approval; and
 - (ii) the date by which the Service Provider is required to have received a Residual Risk Statement from the Customer together with details of each of the tasks which must be completed by the Service Provider, Delivery Milestones which must be Achieved and the Customer Responsibilities which must be completed in order for the Service Provider to receive a Residual Risk Statement pursuant to paragraph 6.11;
 - (b) a formal risk assessment of the Core Information Management System and a risk treatment plan for the Core Information Management System;
 - (c) a completed ISO/IEC 27001 (at least ISO/IEC 27001:2013) Statement of Applicability for the Core Information Management System;
 - (d) the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Services, processes associated with the delivery of the Services, the Customer Premises, the Sites, the Service Provider System, the Customer System (to extent that it is under the control of the Service Provider) and any IT, Information and data (including the Confidential Information of the Customer and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - (e) proposed controls that will be implemented in respect of all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Service Provider System, the Customer System (to the extent that it is under the control of the Service Provider) and any IT, Information and data (including the Confidential Information of the Customer and the Customer Data) to the extent used by the Customer or the Service Provider in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

- (f) the Required Changes Register;
 - (g) evidence that the Service Provider and each applicable Sub-Contractor is compliant with the Certification Requirements; and
 - (h) the diagram documenting the Core Information Management System, the Wider Information Management System and the boundary between them contained in Annex 3 (Information Management System) of this Schedule 2-17.
- 6.7 To facilitate Accreditation of the Core Information Management System, the Service Provider shall provide the Customer and its authorised representatives with:
- (a) access to the Sites, ICT information assets and ICT systems within the Core Information Management System on request and/or in accordance with the Accreditation Plan; and
 - (b) such other information and/or documentation that the Customer or its authorised representatives may reasonably require, to enable the Customer to establish that the Core Information Management System is compliant with the Security Management Plan.
- 6.8 The Customer shall, by the relevant date set out in the Accreditation Plan, review the Security Management Plan and issue to the Service Provider either:
- (a) a Residual Risk Statement which will then form part of the Security Management Plan, confirming that the Customer is satisfied that the identified risks to the Core Information Management System have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Customer; or
 - (b) a rejection notice stating that the Customer considers that the identified risks to the Core Information Management System have not been adequately or appropriately addressed, or the residual risks to the Core Information Management System have not been reduced to the level anticipated by the Statement of Information Risk Appetite, and the reasons why (a "**Risk Management Rejection Notice**").
- 6.9 If the Customer issues a Risk Management Rejection Notice, the Service Provider shall, within twenty (20) Working Days of the date of the Risk Management Rejection Notice:
- (a) address all of the issues raised by the Customer in such notice;
 - (b) update the Security Management Plan, as appropriate; and
 - (c) notify the Customer that the Core Information Management System is ready for an Accreditation Decision.
- 6.10 If the Customer issues a two or more Risk Management Rejection Notices, the failure to receive a Residual Risk Statement shall constitute a material Default and the Customer may terminate this Contract with immediate effect by issuing a Termination Notice to the Service Provider.
- 6.11 Subject to paragraph 6.10, the process set out in paragraphs 6.8 to 6.10 shall be repeated until such time as the Customer issues a Residual Risk Statement to the Service Provider (or terminates this Contract).
- 6.12 The Service Provider shall not use the Core Information Management System to Process Customer Data before receiving a Residual Risk Statement.

6.13 The Service Provider shall keep the Core Information Management System and Security Management Plan under review and shall update the Security Management Plan at least annually in accordance with this paragraph and following the occurrence of any of the events set out in paragraph 6.14. The Customer shall review the Accreditation Decision annually and following the occurrence of any of the events set out in paragraph 6.14.

6.14 The Service Provider shall notify the Customer within two (2) Working Days after becoming aware of:

- (a) a significant change, or a significant planned change, to the components or architecture of the Core Information Management System;
- (b) a new risk or vulnerability is identified to the components or architecture of the Core Information Management System;
- (c) a change in the threat profile;
- (d) a Sub-Contractor failure to comply with the Core Information Management System code of connection;
- (e) a significant change to any risk component;
- (f) a significant change in the quantity of Personal Data held within the Core Information Management System;
- (g) where the Service Provider has previously Processed Personal Data that does not include Special Category Personal Data, it starts to, or proposes to start to, Process Special Category Personal Data under this Contract;
- (h) a proposal to change any of the Sites from which any part of the Services are provided; and
- (i) an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns,

and following any such event, update the Required Changes Register and provide the updated Required Changes Register to the Customer for review within ten (10) Working Days after the initial notification or such other timescale as may be agreed by the Customer. When the Required Changes Register is approved by the Customer, the Service Provider shall implement the change within ten (10) Working Days after such approval or such other timescale as may be agreed by the Customer.

6.15 If the Service Provider fails to implement a change set out in the Required Changes Register by the date agreed with the Customer, such failure shall constitute a material Default and the Service Provider shall:

- (a) immediately cease using the Core Information Management System to Process Customer Data until the Default is remedied, unless directed otherwise by the Customer in writing and then it may only continue to Process Customer Data in accordance with the Customer's written directions; and
- (b) where such Default is capable of remedy, the Service Provider shall remedy such Default within the timescales set by the Customer and, should the Service Provider fail to remedy the Default within such timescales, such failure shall constitute a material Default and the Customer may by terminate this Contract with immediate effect by issuing a Termination Notice to the Service Provider.

6.16 The Service Provider shall review each CCN against the Security Management Plan to establish whether the documentation would need to be amended should such CCN be agreed in accordance with Schedule 2-8 (Contract Change Procedure) and, where a CCN would require an amendment to the Security Management Plan, the Service Provider shall set out any proposed amendments in a draft CCN submitted in accordance with paragraph 3.1 of Schedule 2-8 (Contract Change Procedure) for consideration by the Customer in accordance with in accordance with the Contract Change Procedure.

6.17 The Service Provider shall be solely responsible for the costs associated with developing and updating the Security Management Plan and carrying out any remedial action required by the Customer as part of the Accreditation process.

7 Certification Requirements

7.1 The Service Provider shall ensure, at all times during the Term, that it is certified as compliant with:

(a) ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and

(b) Cyber Essentials Plus,

and shall provide the Customer with a copy of each such certificate of compliance before the Service Provider shall be permitted to use the Core Information Management System to receive or Process Customer Data.

7.2 The Service Provider must ensure that the contract with each CIMS Sub-Contractor:

(a) contains obligations no less onerous on the CIMS Sub-Contractor than those imposed on the Service Provider under this Schedule 2-17; and

(b) provides for the Customer to perform Accreditation of any part of the Core Information Management System that the CIMS Sub-Contractor provides or operates which is not otherwise subject to Accreditation under this Schedule 2-17.

7.3 The Service Provider shall ensure that each Higher Risk Sub-Contractor is certified as compliant with either:

(a) ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or

(b) Cyber Essentials Plus,

and shall provide the Customer with a copy of each such certificate of compliance before the Higher-Risk Sub-Contractor shall be permitted to receive or Process Customer Data.

7.4 The Service Provider shall ensure that each Medium Risk Sub-Contractor is certified compliant with Cyber Essentials.

7.5 The Service Provider shall ensure that the Service Provider and each Sub-Contractor who is responsible for the secure destruction of Customer Data:

- (a) securely destroys Customer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - (b) should satisfy the Customer that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC ("**National Cyber Security Centre**") guidance; and
 - (c) must maintain an asset register of all Customer supplied information, data and equipment to ensure Customer assets are returned and/or deleted.
- 7.6 The Service Provider shall provide the Customer with evidence of its and its Sub-Contractor's compliance with the requirements set out in this paragraph before the Service Provider or the relevant Sub-Contractor (as applicable) shall be permitted to carry out the secure destruction of the Customer Data.
- 7.7 The Service Provider shall notify the Customer as soon as reasonably practicable and, in any event within two (2) Working Days, if the Service Provider or any Sub-Contractor ceases to be compliant with the Certification Requirements, and shall or shall procure that the relevant Sub-Contractor shall:
- (a) immediately cease receiving or Processing Customer Data; and
 - (b) that the relevant Sub-Contractor promptly returns, destroys and/or erases the Customer Data in accordance with Baseline Security Requirements.
- 7.8 The Customer may agree to exempt in whole or part the Service Provider or any Sub-Contractor from the Certification Requirements. Any exemption must be in writing to be effective. The Service Provider must include the exemption in the Security Management Plan.

8 **Security Testing**

- 8.1 The Service Provider shall, at its own cost and expense:
- (a) procure testing of the Core Information Management System by a CHECK Service Provider or a CREST Service Provider (an "**IT Health Check**"):
 - (i) prior to it submitting the Security Management Plan to the Customer for an Accreditation Decision;
 - (ii) before the Service Provider is given permission by the Customer to Process or manage any Customer Data;
 - (iii) if directed to do so by the Customer; and
 - (iv) once every twelve (12) months during the Term.
 - (b) conduct vulnerability scanning and assessments of the Core Information Management System each month;
 - (c) conduct an assessment as soon as reasonably practicable following receipt by the Service Provider or any of its Sub-Contractors of a critical vulnerability alert from a supplier of any software or other component of the Core Information Management System to determine whether the vulnerability affects the Core Information Management System; and

- (d) conduct such other tests as are required by:
 - (i) any Security Remediation Action Plans;
 - (ii) the ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification requirements;
 - (iii) the Security Management Plan; and
 - (iv) the Customer following a Breach of Security or a significant change to the components or architecture of the Core Information Management System,

(each a "**Security Test**").

8.2 The Service Provider shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable, and in any case within ten (10) Working Days, after completion of each Security Test.

8.3 In relation to each IT Health Check, the Service Provider shall:

- (a) agree with the Customer the aim and scope of the IT Health Check;
- (b) promptly, and in any case no later than ten (10) Working Days, following receipt of each IT Health Check report, provide the Customer with a copy of the IT Health Check report;
- (c) in the event that the IT Health Check report identifies any vulnerabilities, the Service Provider shall:
 - (i) prepare a remediation plan for approval by the Customer (each a "**Security Remediation Action Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (A) how the vulnerability will be remedied;
 - (B) unless otherwise agreed in writing between the parties, the date by which the vulnerability will be remedied, which must be:
 - (1) within three (3) months of the date the Service Provider received the IT Health Check report in the case of any vulnerability categorised with a severity of "medium" or below;
 - (2) within one (1) month of the date the Service Provider received the IT Health Check report in the case of any vulnerability categorised with a severity of "high"; and
 - (3) within five (5) Working Days of the date the Service Provider received the IT Health Check report in the case of any vulnerability categorised with a severity of "critical";
 - (C) the tests which the Service Provider shall perform or procure to be performed (which may, at the discretion of the Customer, include a further IT Health Check) to confirm that the vulnerability has been remedied;

- (ii) comply with the Security Remediation Action Plan; and
 - (iii) conduct such further Security Tests on the Core Information Management System to provide independent evidence that the Service Provider has complied with the Security Remediation Action Plan.
- 8.4 The Security Tests shall be designed and implemented by the Service Provider so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to the Service Provider complying with this paragraph 8.4, if a Security Test causes a breach of the Service Levels, the Service Provider shall be granted relief in respect of such Service Levels.
- 8.5 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests with the Service Provider's consent. Without prejudice to the Service Provider's obligations under paragraph 8.3, the Service Provider shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable, and in any case no later than ten (10) Working Days, after completion of each Security Test.
- 8.6 The Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Service Provider, to carry out such tests (including penetration tests) as it may deem necessary in relation to the Services, the Information Management System and/or the Service Provider's compliance with the Security Management Plan ("**Customer Security Tests**"). The Customer shall take reasonable steps to notify the Service Provider prior to carrying out such Customer Security Tests to the extent that it is reasonably practicable for it to do so taking into account the nature of the Customer Security Test.
- 8.7 The Customer shall notify the Service Provider of the results of such Customer Security Tests after completion of each Customer Security Test.
- 8.8 The Customer Security Tests shall be designed and implemented so as to minimise their impact on the delivery of the Services. If a Customer Security Test causes a breach of the Service Levels, the Customer Security Test shall be granted relief in respect of such Service Levels, except where the root cause of the breach was a weakness or vulnerability exposed by the Customer Security Test.
- 8.9 Without prejudice to the provisions of paragraph 8.3(c), where any Security Test carried out pursuant to this paragraph 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Service Provider shall promptly notify the Customer of any changes to the Core Information Management System and/or the Security Management Plan (and the implementation thereof) which the Service Provider proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written approval, the Service Provider shall implement such changes to the Core Information Management System and/or the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible.
- 8.10 If the Customer unreasonably withholds its approval to the implementation of any changes proposed by the Service Provider to the Security Management Plan in accordance with paragraph 8.9 above, the Service Provider shall not be deemed to be in breach of this Contract to the extent it can be shown that such breach:
 - (a) has arisen as a direct result of the Customer unreasonably withholding its approval to the implementation of such proposed changes; and
 - (b) would have been avoided had the Customer given its approval to the implementation of such proposed changes.

- 8.11 For the avoidance of doubt, where a change to the Core Information Management System and/or the Security Management Plan is required to remedy non-compliance with the risk management documentation, the Baseline Security Requirements and/or any obligation in this Contract, the Service Provider shall effect such change at its own cost and expense.
- 8.12 If any repeat Security Test carried out pursuant to paragraph 8.9 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default and the Customer may by terminate this Contract with immediate effect by issuing a Termination Notice to the Service Provider.
- 8.13 The Service Provider shall, by 31 July of each year during the Term, provide to the Customer a letter from its chief executive officer (or equivalent officer) confirming that having made due and careful enquiry:
- (a) the Service Provider has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Contract; and
 - (b) the Service Provider is confident that its security and risk mitigation procedures with respect to the Services remain effective.

9 Vulnerabilities and Corrective Action

- 9.1 The Customer and the Service Provider acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Customer Data.
- 9.2 The severity of vulnerabilities for Service Provider COTS Software and Third Party COTS Software shall be categorised by the Service Provider as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to paragraph 9.4, the Service Provider shall procure (and bear the cost of) the application of security patches to vulnerabilities in the Core Information Management System within:
- (a) seven (7) Days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - (b) thirty (30) Days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - (c) sixty (60) Days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Core Information Management System set out in paragraph 9.3 shall be extended where:
- (a) the Service Provider can demonstrate that a vulnerability in the Core Information Management System is not exploitable within the context of the Services (e.g.

because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Service Provider within the timescales set out in paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

- (b) the application of a 'Critical' or 'Important' security patch adversely affects the Service Provider's ability to deliver the Services in which case the Service Provider shall be granted an extension to such timescales of five (5) Days, provided the Service Provider has followed and continues to follow the security patch test plan agreed with the Customer; or
- (c) the Customer agrees a different maximum period after a case-by-case consultation with the Service Provider under the processes defined in the Security Management Plan.

9.5 The Security Management Plan shall include provisions for major version Updates of all Service Provider COTS Software and Third Party COTS Software to be kept up to date by and at the expense of the Service Provider, such that all Service Provider COTS Software and Third Party COTS Software are always under support throughout the Term, unless otherwise agreed by the Customer in writing.

9.6 The Service Provider shall:

- (a) implement a mechanism for receiving, analysing and acting upon threat information supplied by NCSC, or any other competent Central Government Body;
- (b) promptly notify NCSC of any actual or sustained attempted Breach of Security;
- (c) ensure that the Core Information Management System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
- (d) ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Core Information Management System by actively monitoring the threat landscape during the Term;
- (e) pro-actively scan the Core Information Management System for vulnerable components and address discovered vulnerabilities through the processes described in the Security Management Plan;
- (f) from the date specified in the Accreditation Plan and within five (5) Working Days of the end of each subsequent month during the Term, provide the Customer with a written report which details both patched and outstanding vulnerabilities in the Core Information Management System, the elapsed time between the public release date of patches and either the time of application or, for outstanding vulnerabilities, the time of issue of such report and any failure to comply with the timescales set out in paragraph 9.3 for applying patches to vulnerabilities in the Core Information Management System;
- (g) propose interim mitigation measures to vulnerabilities in the Core Information Management System known to be exploitable where a security patch is not immediately available;
- (h) remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Core Information Management System); and

- (i) inform the Customer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Core Information Management System and provide initial indications of possible mitigations.
- 9.7 If the Service Provider is unlikely to be able to mitigate the vulnerability within the timescales under paragraph 9.3, the Service Provider shall immediately notify the Customer.
- 9.8 If the Service Provider fails to patch vulnerabilities in the Core Information Management System in accordance with paragraph 9.3, such failure shall constitute a material Default and the Customer may by terminate this Contract with immediate effect by issuing a Termination Notice to the Service Provider.
- 10 **Malicious Software**
 - 10.1 The Service Provider shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Customer Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition Updates, as well as regular scans of the Information Management System to check for and prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
 - 10.2 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 Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
 - 10.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of paragraph 10.2 shall be borne by the parties as follows:
 - (a) by the Service Provider where the Malicious Software originates from:
 - (i) the Service Provider Software;
 - (ii) the Third-Party Software supplied by the Service Provider; or
 - (iii) the Customer Data whilst the Customer Data is or was under the control of the Service Provider,

unless, in the case of the Customer Data, the Service Provider can demonstrate that such Malicious Software was present in the Customer Data and not quarantined or otherwise identified by the Customer when the Customer provided the Customer Data to the Service Provider; and
 - (b) otherwise by the Customer.
- 11 **Breach of Security**
 - 11.1 If either party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the Security Management Plan.
 - 11.2 The security incident management process set out in the Security Management Plan shall, as a minimum, require the Service Provider upon becoming aware of a Breach of Security or an attempted Breach of Security to:

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer which shall be completed within such timescales as the Customer may reasonably require) necessary to:
 - (i) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the Information Management System against any such potential or attempted Breach of Security;
 - (iii) apply a tested mitigation against any such Breach of Security or potential or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Service Provider, if the mitigation adversely affects the Service Provider's ability to deliver the Services so as to meet any Service Levels, the Service Provider shall be granted relief against the failure to meet such affected Service Levels for such period as the Customer, acting reasonably, may specify by written notice to the Service Provider; and
 - (iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (b) as soon as reasonably practicable and, in any event, within two (2) Working Days following a Breach of Security or attempted Breach of Security, provide to the Customer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

11.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security which occurred as a result of non-compliance of the Information Management System and/or the Security Management Plan with the Baseline Security Requirements and/or this Contract, then such action and any required change to the Information Management System and/or Security Management Plan shall be completed by the Service Provider at no cost to the Customer.

11.4 If the Service Provider fails to comply with its obligations set out in this paragraph 11, such failure shall constitute a material Default, which if not remedied to the satisfaction of the Customer, shall constitute a material Default and the Customer may terminate this Contract with immediate effect by issuing a Termination Notice to the Service.

12 **Data Processing, Storage, Management and Destruction**

12.1 In addition to the obligations on the Service Provider set out Clause 53 and Schedule 2-22 (Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects) in respect of Processing Personal Data and compliance with the Data Protection Legislation, the Service Provider shall:

- (a) Process Customer Data only in the UK, except where the Customer has given its consent in writing to a transfer of the Customer Data to such other country;
- (b) on demand, provide the Customer with all Customer Data in an agreed open format;
- (c) have documented processes to guarantee availability of Customer Data in the event of the Service Provider ceasing to trade;

- (d) securely erase any or all Customer Data held by the Service Provider when requested to do so by the Customer; and
- (e) securely destroy all systems that have held Customer Data at the end of life of those systems in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as directed by the Customer.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1 Security Classification of Information

- 1.1 If the provision of the Services requires the Service Provider to Process Customer Data which is classified as:
- (a) OFFICIAL-SENSITIVE, the Service Provider shall implement such additional measures as agreed with the Customer from time to time in order to ensure that such information is safeguarded in accordance with the applicable standards; and/or
 - (b) SECRET or TOP SECRET, the Service Provider shall only do so where it has notified the Customer prior to receipt of such Customer Data and the Service Provider shall implement additional measures as agreed with the Customer from time to time in order to ensure that such information is safeguarded in accordance with the applicable standards.

2 Devices

- 2.1 The Service Provider must manage, and must ensure that all Sub-Contractors manage, all devices used by the Service Provider (or Sub-Contractors) on which Customer Data is Processed in accordance the following requirements:
- 2.1.1 the operating system and any applications that Process or have access to Customer Data must be in current support by the vendor, or the relevant community in the case of open source operating systems or applications;
 - 2.1.2 users must authenticate before gaining access;
 - 2.1.3 all Customer Data must be encrypted using an encryption tool agreed to by the Customer;
 - 2.1.4 the device must lock and require any user to re-authenticate after a period of time during which the device is inactive that is proportionate to the risk environment;
 - 2.1.5 the device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Customer Data;
 - 2.1.6 the Service Provider or Sub-Contractor, as applicable, can, without physical access to the device, remove or make inaccessible all Customer Data on the device and prevent any user or group of users from accessing the device;
 - 2.1.7 all devices are within in the scope of any current Cyber Essentials Plus certificate held by the Service Provider, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.
- 2.2 The Service Provider must comply, and ensure that all Sub-Contractors comply, with the recommendations in NCSC Device Security Guidance, (<https://www.ncsc.gov.uk/collection/device-security-guidance>) as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Contract.

- 2.3 Where there any conflict between the requirements of this Schedule 2-17 and the requirements of the NCSC Device Security Guidance, the requirements of this Schedule will take precedence.

3 Encryption

- 3.1 The Service Provider must ensure, and must ensure that all Sub-Contractors ensure, that Customer Data is encrypted:

3.1.1 when stored at any time when no operation is being performed on it; and

3.1.2 when transmitted.

- 3.2 Where the Service Provider, or a Sub-Contractor, cannot encrypt Customer Data, the Service Provider must:

3.2.1 immediately inform the Customer of the subset or subsets of Customer Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so; and

3.2.2 provide details of the protective measures the Service Provider or Sub-Contractor (as applicable) proposes to take to provide equivalent protection to the Customer as encryption.

- 3.3 The Customer, the Service Provider and (where the Customer requires the Service Provider to procure the attendance of) any relevant Sub-Contractor shall meet to agree appropriate protective measures for the unencrypted Customer Data.

- 3.4 Where the Customer and Service Provider reach agreement, the Service Provider must update the Security Management Plan to include:

3.4.1 the subset or subsets of Customer Data that not encrypted and the circumstances in which that will occur; and

3.4.2 the protective measure that the Service Provider and/or Sub-Contractor will put in place in respect of the unencrypted Customer Data.

- 3.5 Where the Customer and Service Provider do not reach agreement within forty (40) Working Days of the date on which the Service Provider first notified the Customer that it could not encrypt certain Customer Data, either party may refer the matter to be determined in accordance with Schedule 2-10 (Dispute Resolution Procedure).

4 Personnel Security

- 4.1 All Service Provider Personnel shall be subject to a pre-employment check before they may participate in the provision and/or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard (available at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>) including:

4.1.1 verification of the individual's identity;

4.1.2 verification of the individual's nationality and immigration status;

4.1.3 verification of the individual's employment history; and

4.1.4 verification of the individual's criminal record.

- 4.2 The Customer and the Service Provider shall review the roles and responsibilities of the Service Provider Personnel who will be involved in the management and/or provision of the Services in order to enable the Customer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Security Check and/or a Counter Terrorist Check, as referred to in the National Security Vetting: Clearance Level Guidance: <https://www.gov.uk/government/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels>). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Customer Data or data which, if it were Customer Data, would be classified as OFFICIAL-SENSITIVE or above.
- 4.3 The Service Provider shall not permit Service Provider Personnel who fail the checks required by paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Customer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Service Provider shall ensure that Service Provider Personnel are only granted such access to Customer Data as is necessary to enable the Service Provider Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Service Provider shall ensure that Service Provider Personnel who no longer require access to the Customer Data (including if they cease to be employed by the Service Provider or any of its Sub-Contractors) have their rights to access the Customer Data revoked within one (1) Working Day.
- 4.6 The Service Provider shall ensure that Service Provider Personnel that have access to the Sites, the ICT Environment or the Customer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the ICT Environment or the Customer Data.
- 4.7 The Service Provider shall ensure that the training provided to Service Provider Personnel under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the ICT Environment or the Customer Data (phishing).

5 Identity, Authentication and Access Control

- 5.1 The Service Provider shall operate an access control regime to ensure:
- (a) all users and administrators of the Service Provider System are uniquely identified and authenticated when accessing or administering the Services; and
 - (b) all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Service Provider shall apply the 'principle of least privilege' when allowing persons access to the ICT Environment and Sites so that such persons are allowed access only to those parts of the Sites and the ICT Environment that is required.
- 5.3 The Service Provider shall retain records of access to the Sites and to the ICT Environment and shall make such record available to the Customer on request.

6 Audit and Protective Monitoring

- 6.1 The Service Provider shall collect audit records which relate to security events in Core Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Service Provider audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Core Information Management System to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Customer Data.
- 6.2 In addition to any requirement in Clause 29.2, the Service Provider shall:
- (a) implement audits and on-going monitoring of the Core Information Management System sufficient to comply with any applicable Relevant Requirements and to prevent or detect any Prohibited Act;
 - (b) keep sufficient records to demonstrate compliance with the requirements of paragraph 6.2(a) to the Customer; and
 - (c) make those records and any documents describing the audit and monitoring undertaken to the Customer on request.
- 6.3 The Service Provider and the Customer shall work together to establish any additional audit and on-going monitoring requirements for the Core Information Management System.
- 6.4 The retention periods for audit records and event logs must be agreed by the Customer and documented in the Security Management Plan.

7 Secure Architecture

- 7.1 The Service Provider shall design the Core Information Management System in accordance with:
- (a) the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
 - (b) the NCSC "Bulk Data Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
 - (c) the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - (i) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - (ii) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (iii) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the Services should not be able to affect the Services or data of another user;

- (iv) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Service Provider should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (v) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (vi) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Service Provider Personnel have access to Customer Data and/or the Customer System that those personnel be subject to appropriate security screening and regular security training;
- (vii) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (viii) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Service Provider to ensure that appropriate security controls are in place with its Sub-Contractors and other suppliers;
- (ix) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Service Provider to make the tools available for the Customer to securely manage the Customer's use of the Services;
- (x) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Service Provider to implement appropriate controls in order to ensure that access to Services interfaces is constrained to authenticated and authorised individuals;
- (xi) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (xii) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any IT system which is used for administration of a cloud service will have highly privileged access to that service;
- (xiii) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Service Provider to be able to provide the Customer with the audit records it needs to monitor access to the Service and the Customer Data held by the Service Provider and/or its Sub-Contractors; and
- (xiv) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Service Provider to educate Service Provider Personnel on the safe and secure use of the Information Management System.

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

1 Application of Annex

- 1.1 This Annex applies to all Sub-Contractors that Process Customer Data.
- 1.2 The Service Provider must:
 - (a) ensure that those Sub-Contractors comply with the provisions of this Annex 2;
 - (b) keep sufficient records to demonstrate such compliance to the Customer; and
 - (c) ensure that its Detailed Implementation Plan includes deliverables, Delivery Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-Contractors to Process Customer Data.

2 Designing and managing secure solutions

- 2.1 The Sub-Contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles (<https://www.ncsc.gov.uk/collection/cyber-security-design-principles>).
- 2.2 The Sub-Contractor must assess their systems against the NCSC Cloud Security Principles (<https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles>) at their own cost and expense to demonstrate that the people, process, technical and physical controls have been provided in an effective way. The Sub-Contractor must document that assessment and make that documentation available to the Customer on the Customer's request.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Sub-Contractor must not Process any Customer Data outside the UK. The Customer may permit the Sub-Contractor to Process Customer Data outside the UK and may impose conditions on that permission, with which the Sub-Contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-Contractor must when requested to do so by the Customer:
 - (a) securely destroy Customer Data on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - (b) satisfy the Customer that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - (c) maintain an asset register of all Customer Furnished Items and Customer supplied Information, data and equipment to ensure the Customer's assets are returned and/or deleted.

4 Personnel Security

- 4.1 The Sub-Contractor must perform appropriate checks on their staff before they may participate in the provision and/or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including:

- 4.1.1 verification of the individual's identity;
- 4.1.2 verification of the individual's nationality and immigration status;
- 4.1.3 verification of the individual's employment history; and
- 4.1.4 verification of the individual's criminal record.

The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

- 4.2 The Sub-Contractor must, if the Customer requires, at any time, ensure that one or more of the Sub-Contractor's staff obtains Security Check clearance (as referred to in the National Security Vetting: Clearance Level Guidance: <https://www.gov.uk/government/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels>) in order to Process Customer Data containing Personal Data above certain volumes specified by the Customer, or containing Special Category Personal Data.
- 4.3 Any Sub-Contractor staff who will, when performing the Services, interact with a person under the age of eighteen (18) years must undergo Disclosure and Barring Service checks.

5 Devices

- 5.1 The Service Provider must manage, and must ensure that all Sub-Contractors manage, all devices used by the Service Provider on which Customer Data is Processed in accordance the following requirements:
 - 5.1.1 the operating system and any applications that Process or have access to Customer Data must be in current support by the vendor, or the relevant community in the case of open source operating systems or applications;
 - 5.1.2 users must be required to authenticate before gaining access;
 - 5.1.3 all Customer Data must be encrypted using an encryption tool agreed to by the Customer;
 - 5.1.4 the device must lock and require any user to re-authenticate after a period of time during which the device is inactive that is proportionate to the risk environment;
 - 5.1.5 the device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Customer Data;
 - 5.1.6 the Service Provider or Sub-Contractor, as applicable, can, without physical access to the device, remove or make inaccessible all Customer Data on the device and prevent any user or group of users from accessing the device; and
 - 5.1.7 all devices are within in the scope of any current Cyber Essentials Plus certificate held by the Service Provider, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.
- 5.2 The Service Provider must comply, and ensure that all Sub-Contractors comply, with the recommendations in NCSC Device Security Guidance, as updated, amended or replaced from

time to time, as if those recommendations were incorporated as specific obligations under this Contract.

- 5.3 Where there any conflict between the requirements of this Schedule 2-17 and the requirements of the NCSC Device Security Guidance, the requirements of this Schedule will take precedence.

6 Encryption

- 6.1 The Service Provider must ensure, and must ensure that all Sub-Contractors ensure, that Customer Data is encrypted:

6.1.1 when stored at any time when no operation is being performed on it; and

6.1.2 when transmitted.

- 6.2 Where the Service Provider, or a Sub-Contractor, cannot encrypt Customer Data the Service Provider must:

6.2.1 immediately inform the Customer of the subset or subsets of Customer Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so; and

6.2.2 provide details of the protective measures the Service Provider or Sub-Contractor (as applicable) proposes to take to provide equivalent protection to the Customer as encryption.

- 6.3 The Customer, the Service Provider and (where the Customer requires the Service Provider to procure the attendance of) any relevant Sub-Contractor shall meet to agree appropriate protective measures for the unencrypted Customer Data.

- 6.4 Where the Customer and Service Provider reach agreement, the Service Provider must update the Security Management Plan to include:

6.4.1 the subset or subsets of Customer Data not encrypted and the circumstances in which that will occur; and

6.4.2 the protective measure that the Service Provider and/or Sub-Contractor will put in place in respect of the unencrypted Customer Data.

- 6.5 Where the Customer and Service Provider do not reach agreement within forty (40) Working Days of the date on which the Service Provider first notified the Customer that it could not encrypt certain Customer Data, either party may refer the matter to be determined in accordance with Schedule 2-10 (Dispute Resolution Procedure).

7 Patching and Vulnerability Scanning

- 7.1 The Sub-Contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and Updates are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8 Third Party Sub-Contractors

- 8.1 The Sub-Contractor must not transmit or disseminate the Customer Data to any other person unless specifically authorised by the Customer. Such authorisation must be in writing to be effective and may be subject to conditions.

- 8.2 The Sub-Contractor must not, when performing any part of the Services, use any software to Process Customer Data where the licence terms of that software purport to grant the licensor rights to Process the Customer Data greater than those rights strictly necessary for the use of the software.

ANNEX 3: INFORMATION MANAGEMENT SYSTEM



ANNEX 4: SECURITY MANAGEMENT PLAN TEMPLATE
SECURITY MANAGEMENT PLAN

LUNA DATA QUALITY SOLUTION **Project/Service – MBI Health Limited**

Annex removed as commercial/confidential

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ANNEX 5

SECURITY POLICY

☐ (ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED AND THE REQUIREMENTS ARE LISTED)

SCHEDULE 2-18

SOFTWARE AND SOFTWARE LICENCE TERMS

1. INTRODUCTION

- 1.1. This Schedule details the various elements of the Software and categorises them into Specially Written Software, Service Provider Software, Third Party Software, Customer Software, Service Provider COTS Software and Third Party COTS Software.
- 1.2. Annexes A to E of this Schedule sets out the licence terms for the Service Provider Software, Third Party Software (including Open Source Ordered Software), Customer Software, Service Provider COTS Software and Third Party COTS Software respectively.
- 1.3. The Service Provider shall update this Schedule periodically to record any Software subsequently acquired from third parties or developed for the delivery of the Services.

2. SPECIALLY WRITTEN SOFTWARE

- 2.1. The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the Service Provider for use by the Service Provider specifically in the provision of the Services (including any modifications or enhancements made to such software during the Term) and including the following items:

Software	Supplier (if Affiliate of the Service Provider)	Purpose	To be deposited in Escrow?
N/A			

- 2.2. The Service Provider will develop Software to meet the Customer's requirements. The following components will be modified to create the Specially Written Software:

Software	Supplier (if Affiliate of the Service Provider)	Purpose	To be deposited in Escrow?
Microsoft Power BI	Microsoft	End User Front End Dashboard	No
Microsoft SQL	Microsoft	Data Processing Database	No

3. SERVICE PROVIDER (NON-COTS) SOFTWARE

- 3.1. The Service Provider Software comprises the following items:

Software	Supplier (if Affiliate of the Service Provider)	Purpose	[Number of Licences]	[Restrictions]	[Number of Copies]	[Other]	To be deposited in Escrow?

4. THIRD PARTY (NON-COTS) SOFTWARE

- 4.1. The Third Party Software shall consist of the following items, including any Open Source Ordered Software:

Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow?

5. CUSTOMER SOFTWARE

- 5.1. The Customer Software comprises the following items:

Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow?

6. SERVICE PROVIDER COTS SOFTWARE

- 6.1. The Service Provider COTS Software comprises the following items:

Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow?

7. THIRD PARTY COTS SOFTWARE

- 7.1. The Third Party COTS Software comprises the following items:

Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow?

Annex A

Service Provider Software

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

MBI Health will grant North of England CSU (hosted by NHS England) and NHS England, a non-exclusive, non-transferable license to use the LUNA National Dashboard solely the purposes agreed for the duration of the service provision.

The licence is granted for use by any of the end-user groups specified in Schedule 2-17 / Annex 4 / Clause 2.5 (Users).

Annex B

Third Party Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Annex C

Customer Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Annex D

Service Provider COTS Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Annex E

Third Party COTS Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

SCHEDULE 2-19

INSURANCES

1. INTRODUCTION

- 1.1. This Schedule contains the list of insurances to be maintained by the Service Provider.
- 1.2. The Service Provider shall:
 - 1.2.1. maintain these insurances with a reputable insurance company on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market; and
 - 1.2.2. not cancel any insurance policy or make any material change to the same without the notifying the Customer in advance, subject always to the Service Provider complying with paragraph 2 below.
- 1.3. The Service Provider shall procure 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 avoided in whole or part. The Service Provider shall use reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.
- 1.4. The Service Provider shall ensure that the public and products liability policies contain an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Service Provider is legally liable.

2. LIST OF INSURANCE PROVISIONS

- 2.1. The Service Provider shall effect and maintain:
 - 2.1.1. employers' liability insurance with a minimum limit of indemnity as required by Law from time to time in relation to the performance of its obligations under this Contract; and
 - 2.1.2. the following insurances adequate to cover all risks in its performance of this Contract from time to time with the minimum limit set out below or such higher limit as required by Law from time to time.
- 2.2. For the avoidance of doubt, the Supplier shall ensure that any insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the period specified in this Contract.
- 2.3. Where the Service Provider intends to claim under any of the insurances for an amount or amounts that are significant in the reasonable opinion of the Customer for any matters that are not related to the Services and/or the Contract, where such claim is likely to result in the level of cover available under any of the insurances being reduced below the minimum limit of indemnity specified in this Schedule, the Service Provider shall promptly notify the Customer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

Class	Minimum Limit	Per claim or in the aggregate
Public Liability	£10,000,000	
Employers Liability	In accordance with any legal requirement for the time being in force, which shall not be below £5,000,000	
Professional Indemnity	£5,000,000	
Product Liability	£5,000,000	
Cyber	£7,000,000	
Business Continuity	N/A	

- 2.4. Any excess or deductibles under the insurances referred to above shall be the sole and exclusive responsibility of the Service Provider.
- 2.5. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Contract.
- 2.6. The Service Provider shall produce to the Customer, on request, copies of all insurance policies referred to in this paragraph 2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 2.7. If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract then the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Service Provider.
- 2.8. The Service Provider shall maintain the insurances referred to in full force and effect at all times from the Effective Date until that date which is six (6) years following the expiration or earlier termination of this Contract (or such longer term as may be required by the Customer which shall be agreed via the Contract Change Procedure).
- 2.9. The Service Provider shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.

SCHEDULE 2-20

STAFFING

- 1.1. The Service Provider shall be entirely responsible for the employment and conditions of service of the Service Provider Personnel employed in the performance of the Services under the Contract.
- 1.2. The Service Provider will employ sufficient employees to ensure that the Services are provided at all times and in all respects in complete conformity with Schedule 2-3 (Performance Management). This will include, but not be limited to, the Service Provider providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Service Provider will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Service Provider's expense) and carries out the Services with regard to:
 - 1.2.1. the task or tasks that person has to perform;
 - 1.2.2. all relevant provisions of the Contract;
 - 1.2.3. all relevant policies, rules, procedures and standards of the Customer (including any racial discrimination and equal opportunities policies);
 - 1.2.4. the need for those working in a health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration; and
 - 1.2.5. the need to keep confidential all information howsoever acquired whether relating to the Customer and its business, or relating to patients, including patient identity, clinical conditions and treatment.
- 1.3. The adherence of the Service Provider's Personnel to required standards of performance shall be routinely monitored and the Service Provider shall promptly take such remedial action as may be required where such standards are not attained.
- 1.4. Before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with the provision of the Services, the Service Provider shall comply with the following Guidance (as applicable to the Services) as amended from time to time:
 - 1.4.1. NHS Employment Check Standards including without limitation the Criminal Record and Barring Check Standard; and
 - 1.4.2. such other checks as required by the Disclosure and Barring Service or which are to be undertaken in accordance with current and future national guidelines and policies.
- 1.5. The Service Provider will, when recruiting potential employees for the purpose of the Contract, act in accordance with the Baseline Security Requirements.
- 1.6. The Service Provider shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.
- 1.7. The Service Provider shall at all times provide a sufficient number of staff of a supervisory level to ensure that all Service Provider Personnel are at all times adequately supervised and properly perform their duties. The Service Provider shall ensure that such supervisory level staff are sufficiently skilled, trained and instructed with regard to all matters under the Contract, including without limitation the performance of the Services.

- 1.8. The Customer reserves the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected, the Service Provider shall supply alternative staff. In addition, the Customer may (but not unreasonably or vexatiously) instruct the Service Provider to remove from the provision of the Services any person employed or engaged by the Service Provider and the Service Provider shall immediately comply with such instruction, and in the case of such removal shall, as soon as it is reasonably practicable thereafter provide a substitute and any such instruction shall not give rise to any liability whatsoever on the part of the Customer to the Service Provider or any other party and shall not affect in any way relieve the Service Provider of its obligations to carry out the Services.
- 1.9. The Service Provider shall procure that all potential staff or persons performing any of the Services during the Term who may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services:
 - 1.9.1. are questioned concerning their Convictions; and
 - 1.9.2. in the case of all potential staff or persons performing any of the Service during the Term, obtain standard and enhanced disclosures from the Disclosure and Barring Service before the Service Provider engages the potential staff or persons in the provision of the Services to the Customer. The Service Provider shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Service Provider being registered with the Disclosure and Barring Service and that all such disclosures are renewed every three years while such potential staff are performing any of the Services.
- 1.10. The Service Provider shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with paragraph 1.9, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Disclosure and Barring Service in accordance with paragraph 1.9, or who fails to obtain standard and enhanced disclosures from the Disclosure and Barring Service upon request by the Service Provider in accordance with paragraph 1.9 is employed without the Customer's prior written consent.
- 1.11. The Service Provider shall procure that the Customer is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Customer, and if the Customer, acting reasonably, considers that the Conviction has a material bearing upon the suitability of the individual concerned to be engaged in the provision of the Services, such person shall only continue to provide the Services with the Customer's prior written consent. The Service Provider shall indemnify and keep the Customer indemnified against any losses arising out of any claim by any person in respect of whom the Customer denies consent to continue to provide the Services as a result of such person disclosing or receiving a Conviction.
- 1.12. The Service Provider shall procure that the Customer is kept advised at all times of any:
 - 1.12.1. disciplinary incident relating to the Service Provider Personnel involving visitors, patients or the Customer's staff or property; and
 - 1.12.2. incidence of serious misconduct involving the Service Provider Personnel.
- 1.13. The Service Provider shall only employ staff for the purposes of the Contract who:
 - 1.13.1. fulfil any minimum training and qualification requirements of the Customer as set out in the Service Specification and also all training and qualification requirements that may be deemed necessary by the Customer, legislation, or any special bodies or associations including but not limited to any 'break away

training' and secondary security training that may be deemed necessary by the Customer;

- 1.13.2. are medically and physically fit in so far as the requirements of the work are concerned (subject to the duties imposed by the Equality Act 2010 including, without limitation, the duty to make reasonable adjustments where the relevant employee has a 'disability' within the meaning of the Equality Act 2010).
- 1.14. The Service Provider shall not employ in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Customer's staff, residents, patients or visitors at risk. In all such cases, the Service Provider is required to notify the Customer of each particular incident. The Service Provider may receive and will accept such instruction as to the immediate and future working capability of the affected employee at the Sites. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Service Provider at its own expense.
- 1.15. The Service Provider will comply with the Customer's policy and procedures on cross infection and notifiable diseases and will co-operate with and act upon the advice of the Customer's infection control representative. Accordingly, the Service Provider shall be required to fulfil certain responsibilities and carry out certain tasks including but not limited to minimising the risk to service users from staff-borne illnesses and making available a programme of appropriate vaccination and offers to update vaccinations for all of the Service Provider Personnel. In the event that there are outbreaks of infections amongst the Service Provider Personnel, the Service Provider shall liaise with the Customer on the appropriate way of dealing with such occurrences.
- 1.16. The Service Provider will maintain detailed records of its staff employed or engaged in providing the Services including details of names and usual place of duty and any other information relating to the Service Provider's obligations in this Schedule 2-20 as may be reasonably required and these records will be available to the Customer on reasonable request.
- 1.17. As a condition of employment in the provision of the Services, Service Provider Personnel:
 - 1.17.1. shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract;
 - 1.17.2. shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their functions under the Contract;
 - 1.17.3. shall not act in a manner reasonably likely to bring discredit upon the Customer;
 - 1.17.4. shall maintain proper standards of appearance and deportment whilst at work;
 - 1.17.5. shall not at any time be on duty under the influence of alcohol or drugs;
 - 1.17.6. shall on being charged with any criminal offence, notify the Service Provider immediately;
 - 1.17.7. shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract.
 - 1.17.8. shall not misuse or abuse the Customer's property;
 - 1.17.9. shall not smoke while on the Site, except in those areas where smoking is expressly permitted.

- 1.18. The Service Provider shall provide its employees with a form of identification that is acceptable to the Customer and which employees shall display on their clothing at all times while on the Site.
- 1.19. The Customer shall not be liable for loss of, or damage to, the personal property of Service Provider Personnel, howsoever caused.
- 1.20. It is the joint responsibility of the Service Provider and its employees to ensure that the employees supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998, it is the responsibility of the Service Provider to keep records of hours worked for each employee.

SCHEDULE 2-21

EMPLOYMENT AND TUPE

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1 DEFINITIONS

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

Admission Agreement	has the meaning given to it in Part D.
Fair Deal Employees	has the meaning given to it in Part D.
Former Service Provider	means a supplier supplying services to the Customer 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 sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).
New Fair Deal	means the revised fair deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including: (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Service Provider by the Customer.
Notified Sub-Contractor	means a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date.
Old Fair Deal	means HM Treasury Guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" issued in June 1999 including the supplementary guidance "Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues" issued in June 2004.
Relevant Transfer	means a transfer of employment to which TUPE applies.
Relevant Transfer Date	means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Service Provider or a Sub-Contractor was the Former Service Provider and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Service Provider (or Sub-Contractor), references to the Relevant Transfer Date shall become references to the Operational Services Commencement Date.

Replacement Contractor	Sub-	means a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor).
Service Provider's Final Service Provider Personnel List		means a list provided by the Service Provider of all Service Provider Personnel who will transfer under TUPE on the Service Transfer Date.
Service Provider's Provisional Service Provider Personnel List		means a list prepared and updated by the Service Provider of all Service Provider Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider.
Service Transfer		means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor.
Service Transfer Date		means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires.
Staffing Information		means in relation to all persons identified on the Service Provider's Provisional Service Provider Personnel List or Service Provider's Final Service Provider Personnel List, as the case may be, all information required in Annex E2 (Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Customer may acting reasonably make changes to the format or information requested in Annex E2 (Staffing Information) from time to time.
Statutory Schemes		means the CSPA, NHSSPA or LGPS as defined in the Annexes to Part D of this Schedule.
Transferring Employees	Customer	means those employees of the Customer to whom TUPE will apply on the Relevant Transfer Date.
Transferring Service Provider Employees	Former Service Provider	means in relation to a Former Service Provider, those employees of the Former Service Provider to whom TUPE will apply on the Relevant Transfer Date.
Transferring Service Provider Employees	Service Provider	means those employees of the Service Provider and/or the Service Provider's Sub-Contractors to whom TUPE will apply on the Service Transfer Date.

2 INTERPRETATION

- 2.1 Where a provision in this Schedule imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Service Provider, Replacement Service Provider or Replacement Sub-Contractor, as the case may be.

3 APPLICABLE PARTS OF THIS SCHEDULE

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

- (a) Part E (Staff Transfer on Exit)
 - (i) Annex E1 (List Of Notified Sub-Contractors)
 - (ii) Annex E2 (Staffing Information)

PART A: TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Customer and the Service Provider agree that:

- (a) 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 Customer Employees; and
- (b) as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or any Notified Sub-Contractor and each such Transferring Customer Employee.

1.2 The Customer shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Service Provider and/or any Notified Sub-Contractor (as appropriate).

2 CUSTOMER INDEMNITIES

2.1 Subject to paragraph 2.2, the Customer shall indemnify the Service Provider and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Customer in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) 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;

- (i) in relation to any Transferring Customer 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
 - (ii) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Service Provider and/or any Notified Sub-Contractor 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.
- (e) a failure of the Customer 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 Customer Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Service Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of TUPE; and
- (g) any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of TUPE.

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 Service Provider or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Service Provider or any Sub-Contractor to comply with its obligations under TUPE.

2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Service Provider and/or any Notified Sub-Contractor pursuant to TUPE then:

- (a) the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- (b) the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Service Provider and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Customer, the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Service Provider and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Service Provider and/or any Notified Sub-Contractor 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, the Customer shall indemnify the Service Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Service Provider takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Service Provider and/or any Notified Sub-Contractor (as appropriate) to the Customer within six (6) months of the Effective Date.

2.8 If any such person as is referred to in paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Service Provider and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Service Provider and/or any Notified Sub-Contractor and the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2, the Service Provider shall indemnify the Customer against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Service Provider or any Sub-Contractor in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Customer Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Service Provider or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Service Provider or the relevant Sub-Contractor (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 Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Service Provider or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
- (f) 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:
 - (i) in relation to any Transferring Customer 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
 - (ii) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Service Provider or a Sub-Contractor, 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;

- (g) a failure of the Service Provider or any Sub-Contractor 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 Customer Employees in respect of the period from (and including) the Relevant Transfer Date;
 - (h) any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to their obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of TUPE; and
 - (i) a failure by the Service Provider 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 Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under TUPE.
- 3.3 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE (including its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Service Provider.

4 **INFORMATION**

- 4.1 The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of TUPE. The Customer shall promptly provide to the Service Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.

5 **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 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 Service Provider of employees whose employment begins after the Relevant Transfer Date, and the Service Provider undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or

(c) 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 Contract Change Procedure.

6 **PENSIONS**

6.1 The Service Provider shall, and/or shall procure that each of its Sub-Contractors shall, comply with:

(a) 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

(b) Part D (and its Annexes) to this Schedule.

PART B: TRANSFERRING FORMER SERVICE PROVIDER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Customer and the Service Provider agree that:

- (a) 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 Service Provider Employees; and
- (b) as a result of the operation of TUPE, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or Notified Sub-Contractor and each such Transferring Former Service Provider Employee.

1.2 The Customer shall procure that each Former Service Provider shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Customer shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SERVICE PROVIDER INDEMNITIES

2.1 Subject to paragraph 2.2, the Customer shall procure that each Former Service Provider shall indemnify the Service Provider and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Service Provider in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Service Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider is contractually bound to honour;
- (c) 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:

- (i) in relation to any Transferring Former Service Provider 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
 - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider and/or any Notified Sub-Contractor 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;
- (d) a failure of the Former Service Provider 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 Service Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - (e) any claim made by or in respect of any person employed or formerly employed by the Former Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or TUPE; and
 - (f) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of TUPE.

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 Service Provider or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Service Provider and/or any Sub-Contractor to comply with its obligations under TUPE.

2.3 If any person who is not identified by the Customer as a Transferring Former Service Provider Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-Contractor pursuant to TUPE then:

- (a) the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Service Provider; and

- (b) the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Service Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Service Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Service Provider and/or the Customer, the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3(b):
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,

the Service Provider and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Service Provider and/or any Notified Sub-Contractor 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, the Customer shall procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Service Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
 - (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Service Provider and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Service Provider, within six (6) months of the Effective Date.

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

3 SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to paragraph 3.2, the Service Provider shall indemnify the Customer and/or the Former Service Provider against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Service Provider or any Sub-Contractor in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Service Provider or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service Provider or a Sub-Contractor (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 Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Service Provider or a Sub-Contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Service Provider in writing;
- (f) 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:
 - (i) in relation to any Transferring Former Service Provider 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

- (ii) in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Sub-Contractor, 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;
 - (g) a failure of the Service Provider or any Sub-Contractor 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 Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date;
 - (h) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of TUPE; and
 - (i) a failure by the Service Provider 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 Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under TUPE.
- 3.3 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.

4 **INFORMATION**

- 4.1 The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Service Provider, in writing such information as is necessary to enable the Customer and/or the Former Service Provider to carry out their respective duties under regulation 13 of TUPE. The Customer shall procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Service Provider Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or
 - (c) 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 Contract Change Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

- 7.1 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with:
- (a) 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
 - (b) Part D (and its Annexes) to this Staff Transfer Schedule.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Service Provider 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 Customer and/or any Former Service Provider.
- 1.2 If any employee of the Customer and/or a Former Service Provider claims, or it is determined in relation to any employee of the Customer and/or a Former Service Provider, that his/her contract of employment has been transferred from the Customer and/or the Former Service Provider to the Service Provider and/or any Sub-Contractor pursuant to TUPE then:
- (a) the Service Provider shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Service Provider; and
 - (b) the Customer and/or the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Service Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Service Provider (as the case may be) 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(b) is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Service Provider), the Service Provider shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Service Provider and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Service Provider and/or the relevant Sub-Contractor 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 2.4, the Customer shall:
- (a) indemnify the Service Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Service Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Service Provider referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Service Provider takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in paragraph 1.2 is neither re-employed by the Customer and/or the Former Service Provider as appropriate nor dismissed by the Service Provider and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Service Provider and/or the Sub-Contractor (as appropriate) and the Service Provider shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Service Provider and/or any Sub-Contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Service Provider and/or the Sub-Contractor and the Service Provider shall indemnify the Customer and any Former Service Provider, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Service Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Service Provider and/or employees of the Sub-Contractor.
- 2.4 The indemnities in paragraph 2.1:
 - (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Service Provider and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph 1.2(a) is made by the Service Provider and/or any Sub-Contractor to the Customer and, if applicable, Former Service Provider within six (6) months of the Effective Date.

3 **PROCUREMENT OBLIGATIONS**

- 3.1 Where in this Part C the Customer accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Service Provider contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

PART D: PENSIONS

1 DEFINITIONS

- 1.1 In this Part D and Part E, the definitions set out in the Annexes to this Part D shall apply and the following words shall have the following meanings:

Actuary	means a Fellow of the Institute and Faculty of Actuaries.
Admission Agreement	means 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.
Best Value Direction	means the Best Value Customers Staff Transfers (Pensions) Direction 2007 or the Welsh Customers Staff Transfers (Pensions) Direction 2012 (as appropriate).
Broadly Comparable	means: (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 the 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 "Broad Comparability" shall be construed accordingly.
CSPS	means the schemes as defined in Annex D1 to this Part D.
Direction Letter/Determination	has the meaning in Annex D2 to this Part D.
Fair Deal Eligible Employees	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D).
Fair Deal Employees	means any of: (a) Transferring Customer Employees;

- (b) Transferring Former Service Provider Employees;
- (c) employees who are not Transferring Customer Employees or Transferring Former Service Provider Employees but to whom TUPE applies on the Relevant Transfer Date to transfer their employment to the Service Provider or a Sub-Contractor, 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 Service Provider or a Sub-Contractor was the Former Service Provider, the employees of the Service Provider (or Sub-Contractor); and/or
- (e) 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 Customer.

Fund Actuary has the meaning given to it in Annex D3 to this Part D.

LGPS has the meaning given to it in Annex D3 to this Part D.

NHSPS has the meaning given to it in Annex D2 to this Part D.

Pension Benefits means 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.

2 PARTICIPATION

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 Service Provider 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 Service Provider 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 Service Provider undertakes:

- (a) 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
- (b) 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 Service Provider is the Former Service Provider (or a Sub-Contractor is a sub-contractor of the Former Service Provider) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Service Provider (or Sub-Contractor) at the [Operational Services Commencement Date], this Part D and its Annexes shall be modified accordingly so that the Service Provider (or Sub-Contractor) shall comply with its requirements from the [Operational Services Commencement 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 Service Provider (or Sub-Contractor) 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 Customer.

3 PROVISION OF INFORMATION

- 3.1 The Service Provider undertakes to the Customer:

- (a) to provide all information which the Customer may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
- (b) 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 prior written consent of the Customer (such consent not to be unreasonably withheld or delayed); and
- (c) 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 this Contract.

4 INDEMNITIES

- 4.1 The Service Provider shall indemnify and keep indemnified the Customer, [NHS Pensions,] any Replacement Service Provider and/or any Replacement Sub-Contractor on demand from and against all and any losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Service Provider of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- (b) 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 Service Provider or a Sub-Contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Service Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which losses:
 - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;

- (ii) arise out of the failure of the Service Provider and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
 - (d) arise out of or in connection with the Service Provider (or its Sub-Contractor) 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:
- (a) shall survive termination of this Contract; and
 - (b) for the avoidance of doubt, shall not be affected by the applicable caps on liability contained in Clause 14 (Limitations on Liability).

5 DISPUTES

- 5.1 Schedule 2-10 (Dispute Resolution Procedure) will not apply to any dispute: (i) between the Customer and/or the Service Provider; 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, which shall in the absence of agreement between the Customer and/or the Service Provider be referred to an independent Actuary:
- (a) who will act as an expert and not as an arbitrator;
 - (b) whose decision will be final and binding on the Customer and/or the Service Provider; and
 - (c) whose expenses shall be borne equally by the Customer and/or the Service Provider unless the independent Actuary shall otherwise direct.
- 5.2 The independent Actuary shall be agreed by the parties or, failing such agreement the independent Actuary shall be appointed by the then President of the Institute and Faculty of Actuaries on the application by the parties.

6 THIRD PARTY RIGHTS

- 6.1 The parties agree that the Contract (Rights of Third Parties) Act 1999 (“**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 in respect of to him or her by the Service Provider under this Part D, in his or her or its own right under section 1(1) of CRTPA.
- 6.2 Further, the Service Provider must ensure that CRTPA will apply to any sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

- 7.1 The Service Provider agrees to notify the Customer should it breach any obligations it has under this Part D and agrees that the Customer shall be entitled to terminate its Contract for material breach in the event that the Service Provider:
- (a) commits an irremediable breach of any provision or obligation it has under this Part D pursuant to Clause 10.2.2; or

- (b) 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 thirty (30) days of the date of a notice from the Customer requiring the Service Provider to remedy it pursuant to Clause 10.2.1.

8 **TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS**

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under TUPE or other form of compulsory transfer of employment), the Service Provider shall, or shall procure that any relevant Sub-Contractor shall:
 - (a) notify the Customer as far as reasonably practicable in advance of the transfer to allow the Customer to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
 - (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
 - (c) 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 "Service Provider" 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 **PENSION ISSUES ON EXPIRY OR TERMINATION**

- 9.1 The provisions of Part E apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Service Provider shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Service Provider [and/or NHS Pension] and/or CSPA and/or the relevant Administering Authority and/or the Customer may reasonably require, to enable the Replacement Service Provider 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 SCHEME ON 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 Service Provider must (and must, where relevant, procure that each of its Sub-Contractors 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 Customer.
- 10.2 Such Broadly Comparable pension scheme must be:
 - (a) established by the Relevant Transfer Date;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Service Provider's Broadly Comparable pension scheme (unless otherwise instructed by the Customer);
 - (d) capable of paying a bulk transfer payment to the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Customer); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Customer).
- 10.3 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Service Provider shall (and shall procure that any of its Sub-Contractors shall):
- (a) supply to the Customer details of its (or its Sub-Contractor'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;
 - (b) 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;
 - (c) 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 Service Provider'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 Customer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - (d) 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 Service Provider and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Service Provider and/or Sub-Contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Service Provider shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract:
- (a) 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 Service Provider'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(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees' employment with the Service Provider or Sub-Contractor (as appropriate) as the date used to determine the actuarial assumptions; and

- (b) 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 Service Provider'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(a) been complied with, the Service Provider shall (or shall procure that the Sub-Contractor shall) pay the amount of the difference to the Replacement Service Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Customer shall otherwise direct. The Service Provider shall indemnify the Customer or the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Customer 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 Service Provider must (and must, where relevant, procure that each of its Sub-Contractors 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 Customer.
- 11.2 Such Broadly Comparable pension scheme must be:
 - (a) established by the date of cessation of participation in the Statutory Scheme;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Customer);
 - (d) capable of paying a bulk transfer payment to the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Customer); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Customer).
- 11.3 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Service Provider shall (and shall procure that any of its Sub-Contractors shall):

- (a) supply to the Customer details of its (or its Sub-Contractor'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;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- (c) where required to do so by the Customer, 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 Customer (where applicable). The Service Provider 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 Service Provider shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- (d) 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 Service Provider and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Service Provider and/or Sub-Contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Service Provider shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Service Provider'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 Service Provider'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 Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Service Provider or the Sub-Contractor (as agreed between them) must pay the Replacement Service Provider'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 Service Provider and any Sub-Contractor, the Shortfall shall be paid by the Service Provider. The Service Provider shall indemnify the Customer or the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Customer directs) for any failure to pay the Shortfall under this paragraph.

12 **RIGHT OF SET-OFF**

12.1 The Customer shall have a right to set off against any payments due to the Service Provider under this Contract an amount equal to:

- (a) 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 Service Provider or from any relevant Sub-Contractor or due from any third party under any indemnity, bond or guarantee;
- (b) any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Service Provider or from any relevant Sub-Contractor or due from any third party under any indemnity, bond or guarantee; or
- (c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Service Provider or from any relevant Sub-Contractor 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 Customer shall also have a right to set off against any payments due to the Service Provider under this Contract all reasonable costs and expenses incurred by the Customer as result of paragraphs 12.1 above.

ANNEX D1: CSPA

1 DEFINITIONS

1.1 In this Annex D1: CSPA to Part D, the following words have the following meanings:

CSPA Admission Agreement	means 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 CSPA in respect of the Services.
CSPA Eligible Employee	means any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Agreement.
CSPA Fair Deal Employee	means a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal.
CSPA	means 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.

2 FUTURE SERVICE BENEFITS

- 2.1 In accordance with New Fair Deal, the Service Provider and/or any of its Sub-Contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA 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 Service Provider and/or any of its Sub-Contractors shall procure that the CSPA 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.
- 2.2 If the Service Provider and/or any of its Sub-Contractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the Term of this Contract for any reason at a time when the Service Provider or Sub-Contractor still employs any CSPA Eligible Employees, the Service Provider shall (and procure that its Sub-Contractors shall) at no extra cost to the Customer, 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: NHSPS

1 DEFINITIONS

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

Direction Letter/Determination means 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 Service Provider or a Sub-Contractor of the Service Provider (as appropriate) relating to the terms of participation of the Service Provider or Sub-Contractor in the NHSPS in respect of the NHSPS Fair Deal Employees.

NHS Broadly Comparable Employees means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Customer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Service Provider 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 Service Provider (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Customer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Service Provider),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Customer 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.

NHSPS Eligible Employees means 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.

NHSPS Fair Deal Employees means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Customer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Service Provider 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 Service Provider (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Customer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Service Provider),

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 Customer, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee.

NHS Body	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.
NHS Pensions	means 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.
NHSPS	means 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.
NHS Pension Scheme Regulations	means 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.
NHS Premature Retirement Rights	means rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Customer, an NHS Body or other employer which participates automatically in the NHSPS) would 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.

2 MEMBERSHIP OF THE NHSPS

- 2.1 In accordance with New Fair Deal, the Service Provider and/or any of its Sub-Contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Service Provider and/or any of its Sub-Contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Service Provider must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
- (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 NHS Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Service Provider must supply to the Customer a complete copy of each Direction Letter/Determination within five (5) Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Service Provider must ensure (and procure that each of its Sub-Contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Service Provider will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Service Provider shall (and shall procure that its Sub-Contractors (if any) shall) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Service Provider shall (and shall procure that its Sub-Contractors (if any) shall) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3 NHS PREMATURE RETIREMENT RIGHTS

- 3.1 From the Relevant Transfer Date until the Service Transfer Date, the Service Provider must provide (and/or must ensure that its Sub-Contractors (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 Customer, an NHS Body or other employer which participates automatically in the NHSPS.

4 NHS BROADLY COMPARABLE EMPLOYEES

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

5 BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)

- 5.1 The Service Provider agrees that the Customer is entitled to make arrangements with NHS Pensions for the Customer to be notified if the Service Provider (or its Sub-Contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Service Provider shall notify the Customer in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Service Provider (or its Sub-Contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Service Provider (or any such Sub-Contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D.

6 COMPENSATION

- 6.1 If the Service Provider (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

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

(b) a Broadly Comparable pension scheme,

the Customer may in its sole discretion permit the Service Provider (or any of its Sub-Contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Service Provider (or Sub-Contractor 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 Service Provider must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Customer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Customer to allow compensation in place of Pension Benefits is in addition to and not instead of the Customer's right to terminate the Contract under paragraph 7 (Breach) of Part D of this Schedule.

7 SERVICE PROVIDER INDEMNITIES

- 7.1 The Service Provider must indemnify and keep indemnified the Customer and any Replacement Service Provider 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: LGPS

1 DEFINITIONS

1.1 In this Annex D3 LGPS to Part D, the following words have the following meanings:

2013 Regulations	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time).
Administering Authority	means in relation to the Fund, the relevant administering authority of that Fund for the purposes of the 2013 Regulations.
Fund Actuary	means the actuary to a Fund appointed by the Administering Authority of the Fund.
Fund	means [insert name], a pension fund within the LGPS.
Initial Contribution Rate	means [XX %] of pensionable pay (as defined in the 2013 Regulations).
LGPS	means 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.
LGPS Admission Agreement	means an admission agreement within the meaning in Schedule 1 of the 2013 Regulations.
LGPS Admission Body	means an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations).
LGPS Eligible Employees	means 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.
LGPS Fair Deal Employees	means 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.
LGPS Regulations	means 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 SERVICE PROVIDER TO BECOME AN LGPS ADMISSION BODY

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Service Provider and/or any of its Sub-Contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each

become an LGPS Admission Body by entering into an LGPS Admission Agreement 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 this Contract.

OPTION 1

2.2 [Any LGPS Fair Deal Employees who:

- (a) 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
- (b) 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:

- (c) active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- (d) 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 Service Provider 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 Service Provider shall (and shall procure that its Sub-Contractors (if any) shall) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3 BROADLY COMPARABLE SCHEME

3.1 If the Service Provider and/or any of its Sub-Contractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Service Provider shall (and procure that its Sub-Contractors 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 Service Provider and/or any of its Sub-Contractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the Term of this Contract for any reason at a time when the Service Provider or Sub-Contractors still employs any LGPS Eligible Employees, the Service Provider shall (and procure that its Sub-Contractors shall) at no extra cost to the Customer, 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

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

5 LGPS RISK SHARING

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the Term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Service Provider or any Sub-Contractor 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 Service Provider or the Sub-Contractor, as the case may be, and the Service Provider shall be reimbursed by the Customer.

- 5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the Term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Service Provider or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Service Provider shall reimburse the Customer an amount equal to A–B (the “**Refund Amount**”) where:

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 Service Provider or Sub-Contractor for that Contract Year, as the case may be, to the Fund.

- 5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Service Provider or any Sub-Contractor 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 Service Provider or any Sub-Contractor (as the case may be) and the Service Provider shall be reimbursed by the Customer.

- 5.4 The Service Provider and any Sub-Contractors shall at all times be responsible for the following costs:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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 Service Provider or any relevant Sub-Contractor 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;

- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Service Provider or any relevant Sub-Contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
 - (f) any increase to the employer contribution rate resulting from the award of pay increases by the Service Provider or relevant Sub-Contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Service Provider and/or any Sub-Contractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - (g) 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 Service Provider or any relevant Sub-Contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
 - (h) any cost of the administration of the Fund that are not met through the Service Provider's or Sub-Contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
 - (i) the costs of any reports and advice requested by or arising from an instruction given by the Service Provider or a Sub-Contractor from the Fund Actuary; and/or
 - (j) 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 Service Provider or Sub-Contractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Service Provider or any Sub-Contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Service Provider shall (or procure that any Sub-Contractor shall) reimburse the Customer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Service Provider shall (or procure that the Sub-Contractor shall) notify the Customer in writing within twenty (20) Working Days:
- (a) 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
 - (b) of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Service Provider or a Sub-Contractor 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 Customer shall either:

- (a) notify the Service Provider in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
 - (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Service Provider; and/or
 - (c) request a meeting with the Service Provider 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 Customer shall notify the Service Provider in writing. In the event that the Service Provider and the Customer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow Schedule 2-10 (Dispute Resolution Procedure).
- 5.10 Any Excess Amount or Exit Payment agreed by the Customer or in accordance with Schedule 2-10 (Dispute Resolution Procedure) shall be paid by the Customer within timescales as agreed between Customer and Service Provider. The amount to be paid by the Customer 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 Service Provider or a Sub-Contractor.
- 5.11 Any Refund Amount agreed by the Customer or in accordance with Schedule 2-10 (Dispute Resolution Procedure) as payable by the Service Provider or any Sub-Contractor to the Customer, shall be paid by the Service Provider or any Sub-Contractor forthwith as the liability has been agreed. In the event the Service Provider or any Sub-Contractor fails to pay any agreed Refund Amount, the Customer shall demand in writing the immediate payment of the agreed Refund Amount by the Service Provider and the Service Provider shall make payment within seven (7) Working Days of such demand.
- 5.12 This paragraph 5 shall survive termination of this Contract.

ANNEX D4: OTHER SCHEMES

PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Service Provider agrees that within twenty (20) Working Days of the earliest of:
- (a) receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any partial termination of this Contract;
 - (c) the date which is twelve (12) months before the end of the Term; and
 - (d) receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with Data Protection Legislation, the Service Provider's Provisional Service Provider Personnel List, together with the Staffing Information and it shall provide an updated Service Provider's Provisional Service Provider Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Customer or, at the direction of the Customer, to any Replacement Service Provider and/or any Replacement Sub-Contractor:
- (a) the Service Provider's Final Service Provider Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
 - (b) the Staffing Information in relation to the Service Provider's Final Service Provider Personnel List (insofar as such information has been updated or not previously provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Service Provider under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-Contractor.
- 1.4 The Service Provider warrants, for the benefit of the Customer, any Replacement Service Provider, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing such information.
- 1.5 From the date of the earliest event referred to in paragraph 1.1(a), 1.1(b) and 1.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Service Provider Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Service Provider 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;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Service Provider Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) 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 Service Provider's Provisional Service Provider Personnel List;
- (e) 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); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Service Provider Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Service Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Service Provider or relevant Sub-Contractor or received from any persons listed on the Service Provider's Provisional Service Provider Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) 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) of this Schedule (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Service Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Service Provider 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 Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Service Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Service Provider's Final Service Provider Personnel List who is a Transferring Service Provider Employee:

- (a) a copy of the most recent month's pay slip data;
- (b) details of cumulative pay for tax and pension purposes;

- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 TUPE EXIT PROVISIONS

- 2.1 The Customer and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which TUPE will apply. The Customer and the Service Provider further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Service Provider Employee.
- 2.2 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the 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 Service Provider and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-Contractor.
- 2.3 Subject to paragraph 2.4, the Service Provider shall indemnify the Customer and/or the Replacement Service Provider and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Service Provider or any Sub-Contractor in respect of any Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Service Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) 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:
 - (i) in relation to any Transferring Service Provider 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
 - (ii) in relation to any employee who is not identified in the Service Provider's Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider to the Customer and/or Replacement Service Provider and/or any Replacement Sub-Contractor, 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;
- (e) a failure of the Service Provider or any Sub-Contractor 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 Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List for whom it is alleged the Customer and/or the Replacement Service Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or TUPE; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Customer and/or Replacement Service Provider to comply with regulation 13(4) of TUPE.

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 Service Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under TUPE.

- 2.5 If any person who is not identified in the Service Provider's Final Service Provider Personnel list claims, or it is determined in relation to any person who is not identified in the Service Provider's Final Service Provider Personnel list, that his/her contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Replacement Service Provider and/or Replacement Sub-Contractor pursuant to TUPE, then:
- (a) the Customer shall procure that the Replacement Service Provider shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
 - (b) the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-Contractor, the Customer shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved
- the Customer shall advise the Replacement Service Provider and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Service Provider and/or Replacement Sub-Contractor 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, the Service Provider shall indemnify the Replacement Service Provider and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Service Provider takes, or shall procure that the

Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

(a) shall not apply to:

(i) any claim for:

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

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

in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-Contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Service Provider and/or Replacement Sub-Contractor to the Service Provider within six (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 Service Provider or any Sub-Contractor nor dismissed by the Replacement Service Provider and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Service Provider Employee.

2.11 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Service Provider's Final Service Provider 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:

(a) the Service Provider and/or any Sub-Contractor; and

(b) the Replacement Service Provider and/or the Replacement Sub-Contractor.

2.12 The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Service Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Service Provider and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of TUPE. The Customer shall procure that the Replacement Service Provider and/or Replacement Sub-Contractor, shall promptly provide to the Service Provider and each Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.

2.13 Subject to paragraph 2.14, the Customer shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Service Provider and/or Replacement Sub-Contractor in respect of any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in TUPE) of any such Transferring Service Provider Employee;
- (b) the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List which the Replacement Service Provider and/or Replacement Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Service Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List on or after their transfer to the Replacement Service Provider or Replacement Sub-Contractor (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 Service Provider's Final Service Provider Personnel List who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
- (f) 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:
 - (i) in relation to any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider 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

- (ii) in relation to any employee who is not a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider or Sub-Contractor, to the Replacement Service Provider or Replacement Sub-Contractor 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;
 - (g) a failure of the Replacement Service Provider or Replacement Sub-Contractor 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 Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in TUPE) of any such Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-Contractor in relation to obligations under regulation 13 of TUPE.
- 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 Service Provider and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-Contractor (as applicable) to comply with its obligations under TUPE.

ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS

ANNEX E2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of current employer (Transferor):

Number of employees in-scope to transfer:

Completion notes

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

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

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

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

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

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

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

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

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

]

SCHEDULE 2-22

Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects

1. CUSTOMER DATA

- 1.1. The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 1.2. The Service Provider shall not store, copy, disclose, process or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- 1.3. To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule 2-7 (Contract, Service Management and Reporting) or by the Customer from time to time.
- 1.4. The Service Provider shall take responsibility for preserving the integrity of Customer Data whilst that Customer Data is in the Service Provider's possession and preventing the corruption or loss of Customer Data in accordance with Data Protection Legislation.
- 1.5. The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 1.6. If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default, the Customer may:
 - 1.6.1. require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the BCDR Plan and the Service Provider shall do so as soon as practicable but not later than the period specified in Schedule 2-16 (BCDR Plan); and/or
 - 1.6.2. itself restore or procure the restoration of Customer Data to a standard that enables the Services to be provided under this Contract, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 1.7. If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.
- 1.8. Subject to Clause 14.1.2, the Service Provider shall indemnify and keep the Customer indemnified at all times from and against all losses sustained by the Customer in the event of any loss, destruction, corruption, degradation or inaccuracy of Customer Data arising by reason of any Default of the Service Provider in the provision of the Services under this Contract.
- 1.9. If any third party makes a claim or intimates the intention to make a claim against either party to this Contract, which may reasonably be considered as likely to give rise to liability for acts conducted under this Contract in respect of the Customer Data, subject to Clause 14.1.2, the Service Provider agrees to indemnify the Customer at all times for all losses that arise by reason of any Default of the Service Provider in the provision of the Services in relation to the Customer Data under this Contract.

- 1.10. Either party shall inform the other immediately, or as soon as practically possible, in writing of:
- 1.10.1. the nature of the relevant claim;
 - 1.10.2. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other party; and
 - 1.10.3. give the other party and its professional advisors reasonable access to its records and premises so that the claim can be properly investigated.
- 1.11. Each party shall ensure that they comply with, and not breach the provisions of Data Protection Legislation and FOIA.

2. DATA PROTECTION

- 2.1. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor.
- 2.2. The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 2.3. The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 2.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 2.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 2.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4. The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 2.4.1. process that Personal Data only on the documented instructions of the Customer, including as set out in this Schedule 2-22, unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited to do so by Law;
 - 2.4.2. ensure that it has in place Protective Measures in accordance with its obligations under Article 32 of the UK GDPR, which are appropriate to protect against a Data Loss Event, including as set out in Schedule 2-17 (Security Management Plan), having taken account of the:
 - 2.4.2.1. nature of the data to be protected;
 - 2.4.2.2. harm that might result from a Data Loss Event;
 - 2.4.2.3. state of technological development; and
 - 2.4.2.4. cost of implementing any measures;

- 2.4.3. ensure that :
 - 2.4.3.1. the Service Provider personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2-22);
 - 2.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider personnel who have access to the Personal Data and ensure that they:
 - 2.4.3.2.1. are aware of and comply with the Service Provider's duties under this paragraph 2;
 - 2.4.3.2.2. are subject to appropriate confidentiality undertakings with the Service Provider;
 - 2.4.3.2.3. 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 Customer or as otherwise permitted by this Contract; and
 - 2.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 2.4.4. not transfer Personal Data outside of the jurisdiction in which it is located unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 2.4.4.1. the importing jurisdiction has been determined by the UK Secretary of State (or by the European Commission or Swiss government, where the Supplier is located in the EU or Switzerland, respectively) as ensuring an adequate level of protection for Personal Data; or
 - 2.4.4.2. the Service Provider has implemented appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation, and has otherwise fully complied with all applicable data transfer rules under the Data Protection Legislation;
 - 2.4.5. where Personal Data is transferred in accordance with paragraph 2.4.4, ensure that the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
 - 2.4.6. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract, or otherwise on any reasonable request of the Customer, unless the Service Provider is required by Law to retain the Personal Data.
- 2.5. Subject to paragraph 2.6, the Service Provider shall notify the Customer immediately (and in any event within 24 hours) if it:
- 2.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.5.2. receives a request to rectify, block or erase any Personal Data;
 - 2.5.3. receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 2.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- 2.5.5. receives a request from any third party for disclosure of Personal Data, including where compliance with such request is required or purported to be required by Law; or
 - 2.5.6. becomes aware of a Data Loss Event.
- 2.6. The Service Provider's obligation to notify under paragraph 2.5 shall include the provision of further relevant information to the Customer, as details become available.
- 2.7. Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - 2.7.1. the Customer with full details and copies of the complaint, communication or request;
 - 2.7.2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4. assistance as requested by the Customer following any Data Loss Event; and
 - 2.7.5. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 2.8. The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2 and shall make these records and information available to the Customer on request.
- 2.9. The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 2.10. Each party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
 - 2.11.1. notify the Customer in writing of the intended Sub-processor and processing;
 - 2.11.2. obtain the written consent of the Customer;
 - 2.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 2 such that they apply to the Sub-processor; and
 - 2.11.4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 2.12. The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.13. The Customer may, following the Contract Change Procedure, request to revise this paragraph 2 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 this Contract).

- 2.14. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may, following the Contract Change Procedure, request to amend this Contract to ensure that it complies with any binding guidance issued by the Information Commissioner's Office.

Description	Details
Subject matter of the processing	The Buyer is Controller and the Supplier is Processor <u>Service Delivery</u> • Presentataion of data relating to patients on open care pathways (ie Waiing lists) • Calculation and presentation of data quality key performance metrics <u>Support Management</u> • Customer Support & Issue Resolution – Managing and responding to end user inquiries efficiently. • Improving Customer Experience – Providing personalized and timely support. • Tracking & Reporting Performance – Analysing end user interactions for better service optimization. • Ensuring Compliance & Security – Storing support interactions securely and in compliance with data protection laws. <u>Contract Management</u> • Managing Customer Relationships – Storing and organizing contact details, emails, and interactions. • Customer Compliance & Security – Ensuring GDPR-compliant data handling and security
Duration of the processing	Within the duration of the contract agreement.
Nature and purpose of the processing	<u>Service Delivery - Supplier will process data for:</u> • Processing of waiting list data for analysis, reporting and improvement trajectory of Data Quality performance. • All data will be securely stored in a Microsoft Azure cloud storage solution. <u>Support Management - Supplier will process data for:</u> • Customer Support & Issue Resolution – Managing and responding to end user inquiries efficiently. • Improving Customer Experience – Providing personalized and timely support. • Tracking & Reporting Performance – Analysing end user interactions for better service optimization. • Ensuring Compliance & Security – Storing support interactions securely and in compliance with data protection laws.

	<u>Contract Management - Supplier will process data for:</u> • Managing Customer Relationships – Storing and organizing contact details, emails, and interactions. • Customer Compliance & Security – Ensuring GDPR-compliant data handling and security
Type of Personal Data	<u>Service Delivery:</u> • Patient's hospital number <u>Support Management:</u> • Contact details of, and communications with, end users reporting issues e.g. First Name, Last Name, Job Title, Contact details (Email/Phone) <u>Contract Management</u> • Contact details, and communications with, contracts concerned with fulfilment of the Supplier's obligations arising from this Framework Agreement • Contact details, and communications with Supplier staff concerned with management of the Framework Agreement Where supplied, First Name, Last Name, Job Title, Contact details (Email/Phone) <i>Data Types:</i> <i>Activity data such as Current Pathway Period Start Date</i> <i>Patient identifiable data will not be included</i>
Categories of Data Subject	Open pathways activity data
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Data provided by NECS will be transferred back to NECS upon completion of the contract or destroyed pending request from NECS.

SCHEDULE 2-23

COLLABORATIVE CLUSTERS

1. Cluster Members benefits under the Contract

- 1.1 The Customer has entered into this Contract both for its own benefit and for the benefit the Cluster Members.
- 1.2 Cluster Members shall have all of the rights granted to the Customer under a Call-Off Contract. Accordingly, where the context requires in order to assure the Cluster Members rights and benefits under this Contract, and unless the Customer otherwise specifies, references to the Customer in this Contract (including those references to a party which are intended to relate to the Customer) shall be deemed to include a reference to the Cluster Members.
- 1.3 Each of the Cluster Members will be a third party beneficiary for the purposes of the Contract (Rights of Third Parties) Act 1999 ("**CRTPA**") and may enforce and benefit from the provisions of this Contract pursuant to CRTPA as if it were the Customer.
- 1.4 The Customer and the Service Provider may (in accordance with its provisions) vary, terminate or rescind this Contract or any part of it, without the consent of any Cluster Member.
- 1.5 The enforcement rights granted to Cluster Members under paragraph 1.3 are subject to the following provisions:
 - 1.5.1 The Customer may enforce any provision of this Contract on behalf of a Cluster Member and any claim from a Cluster Member under CRTPA to enforce this Contract shall be brought by the Customer if reasonably practicable for the Customer to do so;
 - 1.5.2 If the Customer is seeking to enforce the Contract on behalf of a Cluster Member (including by bringing any claim as a result of the Service Provider's Default), the Cluster Member may not seek to enforce the same rights granted to it pursuant to paragraph 1.3 unless the Customer no longer pursues such enforcement; and
 - 1.5.3 The Service Provider's limits and exclusions of liability in this Contract shall apply to any claim to enforce a Contract made by the Customer on behalf of a Cluster Member and to any claim to enforce Contract made by a Cluster Member acting on its own behalf.
- 1.6 Cluster Members shall each receive the same Services from the Service Provider, but the following adjustments will apply in relation to how the Contract will operate in relation to the Customer and Cluster Members:
 - 1.6.1 Services will be provided by the Service Provider to each Cluster Member and the Customer separately;
 - 1.6.2 the Service Provider's obligations in regards to reporting will be owed to each Cluster Member and Customer separately;
 - 1.6.3 the Customer and Cluster Members shall be entitled to separate invoices in respect of the provision of the Services;

- 1.6.4 the separate invoices will correlate to the Services provided to each the Customer and the respective Cluster Members;
- 1.6.5 the Charges to be paid for the Services shall be calculated on a per Cluster Member and Customer basis and each Cluster Member and the Customer shall be responsible for paying their respective Charges;
- 1.6.6 the Service Levels and corresponding Service Credits will be calculated in respect of each Cluster Member and the Customer, and they will be reported and deducted against Charges due by each respective Cluster Member and the Customer; and
- 1.6.7 such further adjustments as the Customer and/or each Cluster Member may notify to the Service Provider from time to time.

Annex A – Cluster Members

Cluster Member	Address	Key Contact and Contact Details
[]		
[]		
[]		
[]		

SCHEDULE 2-24

CUSTOMER RESPONSIBILITIES

1. The responsibilities of the Customer set out in this Schedule 2-24 shall constitute the Customer Responsibilities under this Contract. Any obligations of the Customer in Schedule 2-2 (Service Specification) and the Service Provider Solution shall not be Customer Responsibilities and the Customer shall have no obligation to perform any such obligations unless they are specifically included in this Schedule 2-24, including by reference in the table in paragraph 4 below.
2. The Customer Responsibilities specified within this Schedule shall be provided to the Service Provider free of charge, unless otherwise agreed between the parties.

GENERAL CUSTOMER RESPONSIBILITIES

3. The Customer's general Customer Responsibilities shall be:
 - (a) performing those obligations of the Customer which are set out in the Clauses of this Contract and the paragraphs of the Schedules (except the Schedule 2-2 (Service Specification) and the Service Provider Solution);
 - (b) using its reasonable endeavours to provide the Service Provider with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Service Provider in order for the Service Provider to perform its obligations throughout the Term;
 - (c) providing sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Contract, as defined in the Implementation Plan;
 - (d) using its reasonable endeavours to provide such documentation, data and/or other information that the Service Provider reasonably requests and that is necessary for the Service Provider to perform its obligations under the terms of this Contract, provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Customer; and
 - (e) procuring for the Service Provider access and use of the Customer Premises (as a licensee only) and facilities (including relevant IT systems) in accordance with Clause 34 and as is reasonably required for the Service Provider to comply with its obligations under this Contract, such access to be provided on Working Days or as otherwise agreed by the Customer.

SPECIFIC OBLIGATIONS

4. The Customer shall, in relation to this Contract perform the following additional Customer Responsibilities required under this Contract, the details of which are set out below:

Reference	Description of Customer Responsibility	Deadline / Project Phase
	Provision of a single consolidated set of Trust & ISP data will be made available to to the service provider on a weekly basis in an MS SQL database table, csv or similar.	Mobilisation and Go-Live

SCHEDULE 2-25

FINANCIAL DISTRESS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Applicable Financial Indicators		means the financial indicators from paragraph 5.1 of this Schedule which apply to the Monitored Suppliers, as set out in paragraph 5.2 of this Schedule.
Board		means the Service Provider's board of directors.
Board Confirmation		means written confirmation from the Board in accordance with paragraph 8 of this Schedule.
Credit Rating Level		means a credit rating level as specified in Annex 1 of this Schedule.
Credit Rating Threshold		means the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 2 of this Schedule.
FDE Group		means the [Service Provider, Key Sub-Contractors, the Guarantor and the Monitored Suppliers].
Financial Remediation Plan	Distress	means a plan setting out how the Service Provider will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs, including what the Customer would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard.
Financial Indicators		means in respect of the Supplier, Key Sub-Contractors and the Guarantor, each of the financial indicators set out at paragraph 5.1 of this Schedule and in respect of the Monitored Suppliers, the Applicable Financial Indicators.
Financial Thresholds	Target	means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule.
Monitored Suppliers		means those entities specified at paragraph 5.2 of this Schedule.
Rating Agencies		means the rating agencies listed in Annex 1 of this Schedule.

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Service Provider warrants and represents to the Customer that as at the Effective Date:

- (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies (as set out in Annex 2 of this Schedule) are accurate; and
 - (b) the financial position or, as appropriate, the financial performance of each of the Service Provider, the Guarantor and the Key Sub-Contractors satisfies the Financial Target Thresholds.
- 2.2 The Service Provider shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 The Service Provider shall:
 - (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Service Provider first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraphs 3.1(a), and for the purposes of determining relief under paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
 - (a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 of this Schedule ceases to hold a Credit Rating for that entity.
- 2.5 Each report submitted by the Service Provider pursuant to paragraph 2.3(b) shall:
 - (a) be a single report with separate sections for each of the FDE Group entities;
 - (b) contain a sufficient level of information to enable the Customer to verify the calculations that have been made in respect of the Financial Indicators;
 - (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and

- (e) include a history of the Financial Indicators reported by the Service Provider in graph form to enable the Customer to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be “Financial Distress Events”:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-Contractor notifying the Customer that the Service Provider has not paid any material sums that are properly due under a specified invoice and not subject to a genuine dispute;
- (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its Accounting Reference Date without an explanation to the Customer which the Customer (acting reasonably) considers to be adequate;
- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Customer which the Customer, acting reasonably, considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity’s going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
 - (i) any FDE Group entity makes a public announcement which contains adverse commentary with regards to that FDE Group entity’s liquidity and trading and trading prospects, including a profit warning or ability to trade as a going concern;
 - (ii) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5 million or obligations under a service contract with a total contract value greater than £5 million;
 - (iii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iv) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;

- (v) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
- (vi) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

- (j) any of the Financial Indicators set out at paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Service Provider of a Financial Distress Event (or if the Customer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Service Provider), the Service Provider shall have the obligations and the Customer shall have the rights and remedies as set out in paragraphs 4.3 to 4.5.
- 4.2 In the event of a late, under-payment or non-payment of a Key Sub-Contractor by the Service Provider pursuant to paragraph 3.1(e), the Customer shall not exercise any of its rights or remedies under paragraph 4.3 without first giving the Service Provider ten (10) Working Days to:
 - (a) rectify such late, under-payment or non-payment; or
 - (b) demonstrate to the Customer's reasonable satisfaction that there is a valid reason for late, under-payment or non-payment.
- 4.3 The Service Provider shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-Contractor shall):
 - (a) at the request of the Customer, meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other longer period as the Customer may permit and notify to the Service Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
 - (b) where the Customer reasonably believes (taking into account the discussions and any representations made under paragraph 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (i) submit to the Customer for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other longer period as the Customer may permit and notify to the Service Provider in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to paragraph 4.7, provide such information relating to the Service Provider, any Monitored Supplier, the Guarantor and/or Key Sub-Contractors as the Customer may reasonably require in order to understand the risk to the

Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

- 4.4 The Customer shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Customer does not approve the draft Financial Distress Remediation Plan, it shall inform the Service Provider of its reasons and the Service Provider shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Customer within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:
- (a) approved by the Customer;
 - (b) referred, by notice sent by either party to the other party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Remediation Plan to be held within twenty eight (28) days of the date of the notice; or
 - (c) finally rejected by the Customer.
- 4.5 Following approval of the Financial Distress Remediation Plan by the Customer, the Service Provider shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Service Provider may deem reasonably necessary and/or as may be reasonably requested by the Customer, so that the Financial Distress Remediation Plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
 - (ii) provide a written report to the Customer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Service Provider and/or the reasons why the Service Provider may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with paragraph 4.5(a), submit an updated Financial Distress Remediation Plan to the Customer for its approval, and the provisions of paragraphs 4.4 and 4.5(a) shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.6 Where the Service Provider reasonably believes that the relevant Financial Distress Event under paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and the parties may agree that the Service Provider shall be relieved of its obligations under paragraph 4.5.
- 4.7 The Service Provider shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Customer and within reasonable timescales. Such measures may include:

- (a) obtaining in advance written authority from Key Sub-Contractors, Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Customer and/or entering into confidentiality agreements which permit such disclosure;
- (b) agreeing in advance with the Customer, Key Sub-Contractors, Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Customer;
- (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Customer (which may include making price sensitive information available to Customer nominated personnel through confidential arrangements, subject to their consent); and
- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

- 5.1 Subject to the calculation methodology set out at Annex 3 of this Schedule, the Financial Indicators that apply and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency <i>[if different from the default position set out in paragraph 2.3(b)]</i>
1 [Operating Margin] OR [The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods]	<i>[Operating Margin = Operating Profit / Revenue]</i>	[> [X%]]	<i>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]</i>
2 [Free Cash Flow to Net Debt Ratio] OR [Net Debt to EBITDA Ratio]	<i>[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]</i> OR <i>[Net Debt to EBITDA ratio = Net Debt / EBITDA]</i>	[> [X%]] OR [< [X]] times	<i>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12 months ending on, and Net Debt at, the relevant [accounting reference date / half year end]</i>

3 [Net Debt + Net Pension Deficit to EBITDA ratio]	<i>[Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA]</i>	<i>[< [X]] times</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date</i>
4 [Net Interest Paid Cover]	<i>[Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]</i>	<i>[> [X]] times</i>	<i>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]</i>
5 [Acid Ratio]	<i>[Acid Ratio = (Current Assets – Inventories) / Current Liabilities]</i>	<i>[> [X]] times</i>	<i>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]</i>
6 [Net Asset value]	<i>[Net Asset Value = Net Assets]</i>	<i>[> £0]</i>	<i>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]</i>
7 [Group Exposure Ratio]	<i>[Group Exposure / Gross Assets]</i>	<i>[< [X]]%</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>
Financial Target 8 [etc.]	<i>[etc.]</i>	<i>[etc.]</i>	<i>[etc.]</i>

Key: ¹ – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Monitored Supplier	Applicable Financial Indicators
[Entity 1 e.g. Group Member, Key Sub-Contractor, Relevant Parent Company etc.]	[1 – Operating Margin]

	[2 – etc..] [3][4][5][6][7][8][etc..]
[Entity 2 e.g. Group Member, Key Sub-Contractor, Relevant Parent Company etc.]	[1 – Operating Margin] [2 – etc.] [3][4][5][6][7][8][etc..]
[etc.]	[etc.]

6 FINANCIAL DISTRESS TERMINATION EVENTS

6.1 The following shall be “**Financial Distress Termination Events**” and Customer shall be entitled to terminate this Contract under Clause 10.2.3 if:

- (a) the Service Provider fails to notify the Customer of a Financial Distress Event in accordance with paragraph 2.3(c);
- (b) the Service Provider fails to comply with any part of paragraph 4.3;
- (c) the Customer finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with paragraphs 4.4 to 4.5(a); and/or
- (d) the Service Provider fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with paragraph 4.5(c).

7 PRIMACY OF CREDIT RATINGS

7.1 Without prejudice to the Service Provider’s obligations and the Customer’s rights and remedies under paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of paragraphs 3.1(b) to 3.1(j), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities are no longer below the relevant Credit Rating Thresholds specified for those entities in Annex 2 of this Schedule, then:

- (a) the Service Provider shall be relieved automatically of its obligations under paragraphs 4.3 to 4.5; and
- (b) the Customer shall not be entitled to require the Service Provider to provide financial information in accordance with paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

8.1 If this Contract has been specified as a Critical Service Contract under paragraph 1.1 of Part B to Schedule 2-16 (BCDR Plan) then, subject to paragraph 8.4 of this Schedule, the Service Provider shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Customer in the form set out at Annex 4 of this

Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred or is subsisting since the later of the Effective Date or the previous Board Confirmation; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

- 8.2 The Service Provider shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Service Provider Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Service Provider shall provide the Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in paragraph 8.1 of this Schedule.
- 8.4 Where the Service Provider is unable to provide a Board Confirmation in accordance with paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Service Provider to submit in place of the Board Confirmation, a statement from the Board of Directors to the Customer (and where the Service Provider is a Strategic Supplier, the Service Provider shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

- [Rating Agency 1 (e.g. Standard and Poors)]

- Credit Rating Level 1 = [AAA]
- Credit Rating Level 2 = [AA+]
- Credit Rating Level 3 = [AA]
- Credit Rating Level 4 = [AA-]
- Credit Rating Level 5 = [A+]
- Credit Rating Level 6 = [A]
- Credit Rating Level 7 = [A-]
- Credit Rating Level 8 = [BBB+]
- Credit Rating Level 9 = [BBB]
- Credit Rating Level 10 = [BBB-]
- Etc.

- [Rating Agency 2 (e.g. Moodys)]

- Credit Rating Level 1 = [Aaa]
- Credit Rating Level 2 = [Aa1]
- Credit Rating Level 3 = [Aa2]
- Credit Rating Level 4 = [Aa3]
- Credit Rating Level 5 = [A1]
- Credit Rating Level 6 = [A2]
- Credit Rating Level 7 = [A3]
- Credit Rating Level 8 = [Baa1]
- Credit Rating Level 9 = [Baa2]
- Credit Rating Level 10 = [Baa3]
- Etc.

- [Rating Agency 3 (etc.)]

- Credit Rating Level 1 = [XXX]
- Etc.

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit Rating (long term) (insert credit rating issued for the entity at the Effective Date)	Credit Rating Threshold (insert the actual rating (e.g. AA-) or the Credit Rating Level (e.g. Credit Rating Level 3))
Service Provider	[Rating Agency 1] – [insert rating for Rating Agency 1]	[Rating Agency 1] – [insert threshold for Rating Agency 1]
	[Rating Agency 2] – [insert rating for Rating Agency 2]	[Rating Agency 2] – [insert threshold for Rating Agency 2]
	[etc.]	[etc.]
[Guarantor]	[Rating Agency 1] – [insert rating for Rating Agency 1]	[Rating Agency 1] – [insert threshold for Rating Agency 1]
	[Rating Agency 2] – [insert rating for Rating Agency 2]	[Rating Agency 2] – [insert threshold for Rating Agency 2]
[Sub-Contractor 1]	[Rating Agency 1] – [insert rating for Rating Agency 1]	[Rating Agency 1] – [insert threshold for Rating Agency 1]
[Sub-Contractor 2]	[Rating Agency 2] – [insert rating for Rating Agency 2]	[Rating Agency 2] – [insert threshold for Rating Agency 2]
[etc...]	[etc.]	[etc.]
[Monitored Supplier 1]	[etc.]	[etc.]
[Monitored Supplier 2]	[etc.]	[etc.]
[etc...]	[etc.]	[etc.]

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Service Provider shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

- 1 *Terminology:* The terms referred to and capitalised in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 2 *Groups:* Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 3 *Foreign currency conversion:* Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 4 *Treatment of non-underlying items:* Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 [Operating Margin]	[The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements. Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates. Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.]
2 [Free Cash Flow to Net Debt Ratio]	["Free Cash Flow" = Net Cash Flow from Operating Activities – Capital Expenditure "Capital Expenditure" = Purchase of property, plant & equipment + purchase of intangible assets "Net Debt" = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements. <u>Net Cash Flow from Operating Activities:</u> This should be stated after deduction of interest and tax paid. <u>Capital expenditure:</u> The elements of capital expenditure may be described slightly differently but will be found under 'Cash flows from investing activities' in the Statement of Cash Flows; they should be

OR [Net Debt to EBITDA Ratio]	limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets. <u>Net Debt</u>: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.] OR ["Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents "EBITDA" = Operating profit + Depreciation charge + Amortisation charge The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements. <u>Net Debt</u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met. <u>EBITDA</u>: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator,
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	should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).]
3 [Net Debt + Net Pension Deficit to EBITDA ratio]	["Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents "Net Pension Deficit" = Retirement Benefit Obligations – Retirement Benefit Assets "EBITDA" = Operating profit + Depreciation charge + Amortisation charge The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements. <u>Net Debt</u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. <u>Net Pension Deficit</u>: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms. Where 'Net Debt + Net Pension Deficit' is negative, the relevant Financial Target Threshold should be treated as having been met. <u>EBITDA</u>: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless 'Net Debt + Net

	Pension Deficit' is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).]
4 [Net Interest Paid Cover]	["Earnings Before Interest and Tax" = Operating profit "Net Interest Paid" = Interest paid – Interest received Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. Interest received and interest paid should be shown on the face of the Cash Flow statement. Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.]
5 [Acid Ratio]	[All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.]
6 [Net Asset value]	[Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).]
7 [Group Exposure Ratio]	["Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings "Gross Assets" = Fixed Assets + Current Assets <u>Group Exposure</u>: Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met.

	In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. <u>Gross Assets</u>: Both Fixed assets and Current assets are shown on the face of the Balance Sheet]
8 [Insert additional Financial Indicators as necessary]	<u>[Etc..]</u>

ANNEX 4: BOARD CONFIRMATION

Service Provider Name:

Contract Reference Number:

The Board acknowledges the requirements set out at paragraph 8 of Schedule 2-25 (Financial Distress) and confirms that the Service Provider has exercised due care and diligence and made reasonable enquiry of all relevant Service Provider Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board:

Chair

Signed

Date

Director

Signed

Date

SCHEDULE 2-26

BENCHMARKING

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Benchmarked Service	means the Services (or any part of the Services) that the Customer elects to include in a Benchmark Review under paragraph 2.2.
Comparable Service	means in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance).
Comparison Group	means in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under paragraph 4.8 which consists of organisations which are either of similar size to the Service Provider or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Service Provider or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom.
Equivalent Services Data	means in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty six (36) months prior to the date of the appointment of the Benchmarker.
Good Value	means in relation to a Benchmarked Service, that: (a) having taken into account the Service Levels, the value for money of the Charges (or the Termination Assistance Fees) attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and (b) any Service Levels applicable to that Benchmarked Service are, having taken into account the Charges (or the Termination Assistance Fees), equal to or better than the median service levels for the Comparable Service using Equivalent Services Data.

Upper Quartile means the top twenty five percent (25%) of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Customer may, by written notice to the Service Provider, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The first Benchmark Review may not take place until at least [eighteen (18)] months after the date on which Delivery Milestone [M5 (Go-Live)] is Achieved and each subsequent Benchmark Review must be at least [twelve (12)] months after the previous review.
- 2.3 The Services that are to be the subject of the Benchmark Review shall be identified by the Customer in the notice given under paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Customer shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1, or such other organisation as may be agreed in writing between the parties.
- 3.2 The Customer shall, at the written request of the Service Provider, require the Benchmarker to enter into a confidentiality agreement with the Service Provider in a form proposed by the Service Provider and agreed by the parties.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both parties provided that each party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 If the Customer pays the Benchmarker's costs and expenses in full, the Service Provider shall pay its half of the same within thirty (30) Days of the Customer notifying the Service Provider of such payment.

4 BENCHMARK REVIEW

- 4.1 The Customer shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan will include:
 - (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under paragraph 2.1;
 - (e) an estimate of the resources required from each party to underpin the delivery of the plan;

- (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each party shall give notice in writing to the Benchmarker and to the other party within ten (10) Working Days after receiving the draft plan, either approving the draft plan or suggesting amendments to that plan, which must be reasonable. Where a party suggests amendments to the draft plan pursuant to this paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a party to give notice under paragraph 4.3 shall be treated as approval of the draft plan by that party. If the parties fail to approve the draft plan within thirty (30) Working Days of it first being sent to them pursuant to paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both parties (or prescribed by the Benchmarker), the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Service Provider fails to provide any information requested from it by the Benchmarker and/or described in the plan, such failure shall constitute a Default and be submitted to the Remediation Plan Process.
- 4.6 Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;

- (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
- (e) compare the value for money of the Charges (or the Termination Assistance Fees) attributable to the Benchmarked Services (having regard in particular to the applicable Service Levels) to the value for money of the Upper Quartile;
- (f) compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges (or the Termination Assistance Fees) and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Service Provider;
- (c) the Service Provider's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Service Provider's management and contract governance responsibilities; and
- (e) any other reasonable factors demonstrated by the Service Provider, which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive (such as erroneous costing or non-sustainable behaviour, including excessive consumption of energy or over-aggressive pricing).

5 **BENCHMARK REPORT**

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both parties, at the time specified in the plan approved under paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges (or the Termination Assistance Fees) and/or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data.

- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Service Provider shall (subject to paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Customer but in any event within no more than three (3) months. Any associated changes to the Charges (or the Termination Assistance Fees) shall take effect only from the same date and shall not be retrospective.
- 5.4 The Service Provider acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges (or the Termination Assistance Fees) or any reduction in the Service Levels.
- 5.5 The Service Provider shall be entitled to reject any Benchmark Report if the Service Provider reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Service Provider shall not be obliged to implement any Benchmark Report to the extent this would cause the Service Provider to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Service Provider cannot technically implement the recommended changes.
- 5.7 In the event of any dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under paragraph 5.5 and/or any matter referred to in paragraph 5.6, the dispute shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure). For the avoidance of doubt in the event of a dispute between the parties, the Customer shall continue to pay the Charges (or the Termination Assistance Fees) to the Service Provider in accordance with the terms of this Contract and the Service Levels shall remain unchanged pending the conclusion of the dispute resolution procedure.
- 5.8 On conclusion of the dispute resolution procedure:
- (a) if it is determined that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges (or the Termination Assistance Fees) shall be implemented by the Service Provider, the Service Provider shall immediately repay to the Customer the difference between the Charges (or the Termination Assistance Fees) paid by the Customer up to and including the date of the determination and the date upon which the recommended reduction in Charges (or the Termination Assistance Fees) should have originally taken effect pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (b) if it is determined that all or any part of the Benchmark Report recommendations regarding any changes to the Service Levels shall be implemented by the Service Provider:
 - (i) the Service Provider shall immediately implement the relevant changes;
 - (ii) the Service Provider shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the determination if the relevant changes had taken effect on the date determined pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

- (iii) the relevant changes shall thereafter be subject to the Contract Change Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5.9 Any failure by the Service Provider to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with paragraph 5.3 (unless the provisions of paragraph 5.6 and/or paragraph 5.7 apply) or in accordance with paragraph 5.8 shall, without prejudice to any other rights or remedies of the Customer, constitute a Service Provider Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

SCHEDULE 2-27

GOVERNANCE

1 DEFINITIONS

1.1 In this Schedule 2-27, the following definitions shall apply:

Board Member means the initial persons appointed by the Customer and Service Provider to the Boards as set out in Annex 1 and any replacements from time to time agreed by the parties in accordance with paragraph 3.3, as below.

Boards means the Service Management Board, and “**Board**” shall mean any of them.

2 MANAGEMENT OF THE SERVICES

2.1 The Service Provider and the Customer shall each appoint a Project Manager for the purposes of this Contract through whom the Services shall be managed day-to-day.

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

3 BOARDS

Establishment and structure of the Boards

3.1 The Boards shall be established by the Customer for the purposes of this Contract on which both the Service Provider and the Customer shall be represented.

3.2 In relation to each Board, the:

- (a) Customer Board Members;
- (b) Service Provider Board Members;
- (c) frequency that the Board shall meet (unless otherwise agreed between the parties);
- (d) location of the Board's meetings; and
- (e) planned date by which the Board shall be established,

shall be as set out in Annex 1.

- 3.3 In the event that either party wishes to replace any of its appointed Board Members, that party shall notify the other in writing of the proposed change for agreement by the other party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Customer Board Member has at all times a counterpart Service Provider Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Customer for each Board as identified in Annex 1. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
 - (b) setting the agenda for Board meetings and circulating it to all attendees in advance of such meeting;
 - (c) chairing the Board meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- ~~3.6~~ Board meetings shall be quorate as long as at least two representatives from each party are present.
- 3.7 The parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE SERVICE MANAGEMENT BOARD

- 4.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
- (a) receive reports from the Project Managers on matters such as issues relating to delivery and performance of existing Services, progress against the Implementation Plan and possible future developments;
 - (b) review service management, co-ordination of individual projects and any integration issues;

- (c) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the parties;
- (d) consider and resolve disputes (including disputes as to the cause of a delay or the performance of the Services) in the first instance and if necessary escalate the dispute to the Programme Board
- (e) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.
- (f) identify the risks to be managed via the regular risk reports;
- (g) subject to the Contract Change Procedure, accept or reject new risks proposed for inclusion in the Risk Register and agree any adjustment to the Charges (if any);
- (h) subject to the Contract Change Procedure, ratify or refuse requests to close risks on the Risk Register and agree any adjustment to the Charges (if any); and
- (i) identify new risks relating to or arising out of the performance of the Services and, to the extent such risks are not already assigned, assign provisional owners to manage these risks.
- (j) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Customer to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the future Charges and/or Service Levels set out in Schedule 2-3;
- (k) ensure compliance of the application with the applicable Standards and Regulations;
- (l) grant dispensations for variations from such compliance with the Service Provider Solution and/or Service Specification where appropriate;
- (m) assure the coherence and consistency of the systems architecture for the solution developed in accordance with the Service Provider Solution;
- (n) monitor developments in new technology and reporting on their potential benefit to the Services;
- (o) provide advice, guidance and information on technical issues; and
- (p) assure that the technical architecture of the solution developed in accordance with the Service Provider Solution is aligned to the Service Specification and has sufficient flexibility to cope with the future requirements of the Customer.

6 **REMOVED**

7 **REMOVED**

8 **REMOVED**

9 **CONTRACT MANAGEMENT MECHANISMS**

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

9.2 The Service Provider shall develop, operate, maintain and amend, as agreed with the Customer, processes for:

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

9.3 The Risk Register shall be updated by the Service Provider and submitted for review by the Service Management Board.

10 **ANNUAL REVIEW**

10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the parties.

10.2 The meetings shall be attended by the Partner of the Service Provider and the Senior Responsible Officer of the Customer and any other persons considered by the Customer necessary for the review.

ANNEX 1

REPRESENTATION AND STRUCTURE OF BOARDS

Service Management Board

Customer Members of Service Management Board	██████████ [Chairperson]
Service Provider Members of Service Management Board	MBI - tbc MBI - tbc
Start Date for Service Management Board meetings	01/04/2025
Frequency of Service Management Board meetings	Monthly
Location of Service Management Board meetings	Virtual meeting unless otherwise agreed

SCHEDULE 2-28

PAYMENTS ON TERMINATION

1 TERMINATION PAYMENT

- 1.1 The Termination Payment payable pursuant to Clause 10.10 shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

2 BREAKAGE COSTS PAYMENT

- 2.1 The Service Provider may recover through the Breakage Costs Payment only those costs incurred by the Service Provider directly as a result of the termination of this Contract pursuant to Clause 10.9 which:

- 2.1.1 would not have been incurred had this Contract continued until expiry of the Term;
- 2.1.2 are unavoidable, proven, reasonable, and not capable of recovery;
- 2.1.3 are incurred under arrangements or agreements that are directly associated with this Contract; and
- 2.1.4 are not Contract Breakage Costs, other than those described in paragraph 2.5 (Contract Breakage Costs) of this Schedule 2-28.

Limitation on Breakage Costs Payment

- 2.2 The Breakage Costs Payment shall not exceed the lower of:
- 2.2.1 the relevant limit set out in Annex 1; and
 - 2.2.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 2.3 The Customer shall not be liable under this Contract for any costs associated with Service Provider Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 2.4 REMOVED

Contract Breakage Costs

- 2.5 The Service Provider shall be entitled to Contract Breakage Costs only in respect of third party contracts or Key Sub-Contractor contracts which:
- 2.5.1 are not assigned, novated or otherwise transferred to a Replacement Service Provider at the election of the Customer; and
 - 2.5.2 the Service Provider can demonstrate to the Customer's reasonable satisfaction:
 - (a) are surplus to the Service Provider's requirements after termination, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (b) have been entered into by it in the ordinary course of business.

- 2.6 The Service Provider shall seek to negotiate termination of any third party contracts or Key Sub-Contractor contracts with the relevant third party or Key Sub-Contractor (as the case may be) using all reasonable endeavours to minimise any cancellation or termination charges.
- 2.7 Except with the prior written consent of the Customer, the Customer shall not be liable for any costs (including cancellation or termination charges) that the Service Provider is obliged to pay in respect of (without limitation) the termination of any contractual arrangements for occupation of, support of and/or services provided for Sites or other Service Provider premises which may arise as a consequence of the termination of this Contract.

3 UNRECOVERED PAYMENT

- 3.1 The Unrecovered Payment shall not exceed the lowest of:
- 3.1.1 the relevant limit set out in Annex 1;
 - 3.1.2 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
 - 3.1.3 the Charges that, but for the termination of this Contract would have been payable by the Customer after termination in accordance with Schedule 2-4 (Charges and Invoicing) and as forecast in the Pricing Schedule.

4 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

- 4.1 The Service Provider shall use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- 4.1.1 redeploying Goods, employees and resources for other purposes;
 - 4.1.2 at the Customer's request, assigning any third party contracts and Sub-Contractor contracts to the Customer or a third party acting on behalf of the Customer; and
 - 4.1.3 in relation third party contracts and Sub-Contractor contracts that are not assigned to the Customer or to another third party, terminating those contracts at the earliest possible date without breach and where contractually permitted.
- 4.2 If Goods, employees and resources can be used by the Service Provider for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Customer or a third party to the Service Provider. In the event of any dispute arising over whether the Service Provider can use any assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the dispute shall be referred to the dispute resolution procedure set out in Schedule 2-10.

5 COMPENSATION PAYMENT

- 5.1 The "**Compensation Payment**" shall be an amount equal to the total forecast Charges (as stated in the Pricing Schedule) over the Shortfall Period multiplied by the Anticipated Profit Margin.
- 5.2 For the purposes of paragraph 5.1, the "**Shortfall Period**" means the number of Days equal to the number of Days by which the notice given falls short of three hundred and sixty-five (365) Days, and "**Anticipated Profit Margin**" means 10% of the sum of the Charges paid up to termination less any Deductions.
- 5.3 The Compensation Payment shall be no greater than the lower of:

5.3.1 the relevant limit set out in Annex 1; and

5.3.2 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

6 FULL AND FINAL SETTLEMENT

6.1 Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Service Provider in relation to any termination by the Customer pursuant to Clause 10.9 and the Service Provider hereby waives all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

7 INVOICING FOR THE PAYMENTS ON TERMINATION

7.1 All sums due under this Schedule shall be payable by the Customer to the Service Provider in accordance with the payment terms set out in paragraph 6 of Schedule 2-4 (Charges and Invoicing).

8 SET OFF

8.1 The Customer shall be entitled to set off any outstanding liabilities of the Service Provider against any amounts that are payable by the Customer pursuant to this Schedule.

9 NO DOUBLE RECOVERY

9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Goods that the Customer requires the Service Provider to transfer to the Replacement Service Provider then, to the extent that the Customer makes any payments to the Service Provider in respect of such Goods, such payments shall be deducted from the amount payable pursuant to this Schedule.

9.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Service Provider has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

9.3 Any payments that are due in respect of the Goods shall be calculated in accordance with the provisions of the Exit Plan.

10 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

10.1 The Customer may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

10.2 The Service Provider shall within 15 Working Days of receiving the Request for Estimate (or such other timescale agreed between the parties), provide an accurate written estimate of the Termination Payment and Compensation Payment that would be payable by the Customer based on a postulated termination specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

10.2.1 be based on the relevant amounts set out in the Pricing Schedule;

10.2.2 include:

- (a) a detailed description of the mechanism by which the Termination Estimate is calculated;

- (b) full particulars of the estimated Contract Breakage Costs in respect of each Key Sub-Contractor contract or third party contract and appropriate supporting documentation; and
- (c) such information as the Customer may reasonably require; and

10.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

- 10.3 The Service Provider acknowledges that the Customer's Request for Estimate shall not be construed in any way as to represent an intention by the Customer to terminate this Contract.
- 10.4 If the Customer issues a Termination Notice to the Service Provider within the stated period for which a Termination Estimate remains valid, the Service Provider shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing by the parties.

ANNEX 1 TO SECTION A: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Customer shall be liable to pay to the Service Provider pursuant to this Contract:

Date of Termination	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year	Call-Off Contract Charges paid during the notice period	Call-Off Contract Charges paid during the notice period	Call-Off Contract Charges paid during the notice period
Anytime in the second Contract Year			
Anytime in the third Contract Year			
Anytime in the fourth Contract Year			
Anytime in Contract Years 5 – [x, where x is an integer value]			

SCHEDULE 2-29

Extra Call-off Terms and Conditions

☐ (only applicable to the Contract if this box is checked and the requirements are listed)